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APPLICABLE FOR May 26 EXAM

V'Smart Academy

IDT SUPER 50



CA Vishal Bhattad

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INDEX

Chapter	Description	Total No. of Ques	Changed Que from Previous Super 50 of Jan 26 & Amended Que for May 26	Pg. No.
1.	Supply Under GST	2	Q 1(12), Q 2(2)	1
2.	Reverse Charge & ECO	2	Q 1(m)	7
3.	Composition levy	2	-	11
4.	Exemption	2	Q2(14)(15)	15
5.	Time of Supply	2	Q1(i)(l)	23
6.	Value of Supply	4	Q2, Q3, Q 4	29
7.	Input Tax Credit	5	Q1, 4	35
8.	Place of Supply	7	Q7(2)	50
9.	Registration	2	-	64
10.	Tax Invoice	3	Q1 (1)(4)(7)	70
11.	Accounts & Records	1	-	77
11	E-Way Bill	1	-	79
12.	Payment of Tax & TDS-TCS	5	-	83
13.	Return	1	-	91
14.	Refund	6	Q. 1.1	96
15.	Jobwork	1	Q1(10)	105
16.	Assessment & Audit	1	-	109
17.	Advance Ruling	1	-	112
18.	Demand & Recovery	2	Q1(7)	115
19.	Liability to pay certain Cases	1	-	122
20.	Offences & Penalties	2	Q1(A)(1), 2(3)	125
21.	Appeal & Revision	1	Q1(5)	132
22.	Miscellaneous Provision	1	-	136
	Customs			
23.	Valuation	3	-	138
24.	Baggage	1	Q1	142
25.	Drawback	2	-	144
	Total No. of Questions	61		

Note:- The content highlighted in green colour pertains to the amendments for May 2026.

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01 Supply Under GST

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?

   What would be your answer if Veer Ltd. pays ₹ 3,00,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions.

   What would be your answer if Veer Ltd offers its employees ESPP as part of their compensation package. When an employee decides to purchase these stocks, Dheer Ltd. (Japan based Co – holding company) directly transfers the shares to the employee. Veer Ltd. reimburses Dheer Ltd. for the cost of these shares on a cost-to-cost basis & there is no separate commission charged by Dheer Ltd.
4) Further M/s Veer appointed M/s Ram & M/s Shyam as agents to sell the products on behalf of M/s. Veer with the conditions that both of them guarantee the realization of payment from buyers. Both M/s. Ram and M/s. Shyam provide short-term borrowing facilities to buyers for timely payment of dues against supplies made to them and for this they charge interest from the ultimate buyer. While M/s. Ram raises invoices in the name of M/s. Veer and M/s. Shyam raises invoices in its own name.

   In light of provisions contained in Para 3 of Schedule I of CGST Act, kindly explain treatment of interest charged by M/s. Ram and M/s. Shyam in above mentioned cases.
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.
9) Veer Ltd. entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Veer Ltd. was not in a situation to clear the goods upon payment of import duty. Veer Ltd. sold the goods to Paramveer Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Veer Ltd. shall purchase back the goods in future from Paramveer Export House.
10) Mr. Veer also donated some money to Jansewa Charitable Trust in the memory of his late father. The Jansewa

Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Mr. Veer in the memory of his father" on the door of the room so constructed.

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

11) In addition to above, M/s Veer Ltd. needs an insurance worth ₹ 50 crore. It approaches FUTURE Insurance Ltd. for the same. However, since FUTURE Insurance Ltd. is unable to underwrite the entire risk alone, it enters into a reinsurance agreement with a reinsurer – ROYAL Insurance Ltd. The total premium charged is ₹ 5 lakh. The insurer – FUTURE Insurance Ltd. pays a reinsurance premium of ₹ 1 lakh to ROYAL Insurance Ltd. This allows FUTURE Insurance Ltd. to manage its risk and financial exposure. While paying this amount to ROYAL Insurance Ltd., FUTURE Insurance Ltd. deducts a ceding commission of ₹ 50,000 which it has charged for the services it provides to ROYAL Insurance Ltd. ROYAL Insurance Ltd. pays GST on the gross reinsurance premium including the ceding commission. Discuss whether the Services by FUTURE Insurance Ltd. to ROYAL Insurance Ltd. for which ceding commission is deducted from reinsurance premium paid by FUTURE Insurance Ltd. to ROYAL Insurance Ltd. amounts to supply.

12) FUTURE Insurance Ltd. enters into a co-insurance agreement with BHARTI Insurance Ltd. where FUTURE Insurance Ltd. is the lead insurer. The insured – M/s Veer Ltd.- pays a total premium of ₹ 10,00,000 which is apportioned by the lead insurer – FUTURE Insurance Ltd. between itself and BHARTI Insurance Ltd. in the ratio of 60:40 for the insurance services jointly supplied by them to M/s Veer Ltd. FUTURE Insurance Ltd. agrees to discharge the entire GST liability on the full amount of premium received from M/s Veer Ltd. Discuss whether the Apportionment of co-insurance premium by FUTURE Insurance Ltd. to BHARTI Insurance Ltd. for the insurance services jointly supplied by them to M/s Veer Ltd. amounts to supply.

13) M/s Veer Ltd. imports Fabrics from Japan. The goods are stored in a customs bonded warehouse without being cleared for home consumption. While the goods are warehoused, M/s Veer Ltd sells them to Beta Pvt. Ltd., who further sells them to Gamma Ltd. before clearance.

Separately, M/s Veer Ltd. stores chemicals in a Free Trade Warehousing Zone (FTWZ) located in an SEZ and sells the goods to Delta Industries in the Domestic Tariff Area (DTA) before clearance. Further, in another transaction, goods are sold by endorsement of documents of title after dispatch from a place outside India but before clearance for home consumption.

Discuss the GST implications of the above transactions with reference to Schedule III of the CGST Act.

Answer:-

(1)	**Legal Provision:-** ➲ **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.** ➲ 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 1, otherwise not. **Discussion:-** ➲ 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).** ➲ He has not involved himself in the supply or receipt of goods in any way. ➲ Hence, **Mr. Rudra is not an agent** of Mr. Veer for the purpose of para 3 of schedule I. **Conclusion:-** i) **No,** it is **not to be treated as a supply** as per para 3 of Schedule I. This is because 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. ➲ As per **CBIC clarification**, ESOP/ESPP/RSU is a part of employee's remuneration as per their contract & thus, it is **not a supply** as per para 1 of Schedule III. ➲ Securities/shares are neither goods nor services as per the definitions in the GST Act & thus, **its sale or purchase is not a supply.** **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. 3) ➲ In this case, the amount paid as incentive by Veer Ltd. is **not in the nature of gift**, and thus, is not covered under Schedule I. ➲ Infact, the incentive is **part of the salary** and is directly linked to the sales target. ➲ Therefore, the services provided in course or in relation to employment by the employees for which incentives are given to them shall **not be treated as a "supply".** 4) The reimbursement from Veer Ltd. to Dheer Ltd. for the shares transferred to its employees, when done on a cost-to-cost basis, is **not subject to GST.** Also, the sale or purchase of shares is **not a supply** as these are not goods or services.
(4)	➲ M/s. Ram & M/s. Shyam are Del Credere Agents (DCA) as they guarantee payment to the supplier, M/s. Vaar. ➲ As per **Para 3 of Schedule I** of the CGST Act 2017, a DCA is considered an agent if it issues the invoice in its own name. ➲ M/s. Shyam issues invoices in its own name, making it an agent under Para 3 of Schedule I, whereas M/s. Ram issues invoices in M/s. Veer's name, so it is not an agent under this provision. **<u>Tax treatment of interest charged:</u>** ➲ **M/s. Ram (Not an Agent):** Interest on short-term credit is an independent supply of service and is exempt from tax. ➲ **M/s. Shyam (Agent under Para 3 of Schedule I):** Interest is subsumed in the value of goods supplied and is taxable as part of the goods' value.
(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 perquisites are provided by employer to its employees as per the contractual agreement between them, such perquisites 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.

Discussion & Conclusion:

(a)	➲ In given case, perquisites are provided by employer to employee are as per the contract between them & is thus provided in relation to employment. ➲ It is not treated as supply under GST as per **para 1 of Schedule III** & not leviable to GST.
(b)	➲ Here, perquisites are provided by employer to employee without any agreement between them & thus, are not provided in relation to employment. ➲ It is not covered under para 1 of Schedule III & thus, taxable. However, GST is payable on **entire value if such value exceeds ₹ 50,000** in a financial year for an employee as per **para 2 of Schedule I.**

(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) **Legal Provision:**

➲ 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.

➲ So, if no ITC is availed on such business asset, then it will not be treated as supply under this para.

Discussion & Conclusion:

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.

(9) **Legal Provision:** As per **para 8(b) of Schedule III to CGST Act 2017,** high seas sale transactions i.e. supply of goods by consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated **neither as supply of goods nor as supply of services under GST.**

Discussion & Conclusion:

➲ In given case, the sale of goods by Veer Ltd. to Paramveer Export House in high seas shall **not be liable** to GST.

➲ Further, the import duty including IGST shall be payable by Paramveer Export House **at the time of** clearance of goods at port of import.

➲ In case the goods are sold back by Paramveer Export House to Veer Ltd. at a subsequent point of time, the same shall be treated as **normal domestic sale transaction and GST shall be applicable** on the same subject to other conditions prescribed under GST Law.

(10) **Legal Provision:**

➲ As per **CBIC clarification,** it is clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premise as an expression of **gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity** to the donor to advertise or promote his business, then it can be said that there is **no supply of service for a consideration (i.e. donation).**

➲ Donations received by charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of donation or gift to supply a service.

➲ **Thus, GST is not leviable where all the following three conditions are satisfied namely:**

- ➢ Gift or donation is made to a charitable organization.
- ➢ Payment has the character of gift or donation.
- ➢ Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

	Discussion & Conclusion: ➲ In given case, the way the name of Rudraksh Kapoor is displayed on the door of room constructed in school run by Jansewa Charitable Trust, **it is only an expression of gratitude and public recognition** of Veer's act of philanthropy and is **not aimed at advertising or promoting** his business. ➲ There is no reference/mention of his publishing house to be advertised. ➲ Thus, the **money donated** by Mr. Veer is **not leviable** to GST.
(11)	**Legal Provision:** Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer is neither supply of goods nor supply of services, subject to the condition that the GST is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said commission. **[Para 10 of Schedule III]** **Conclusion:** In the given case, the reinsurer (ROYAL Reinsurers Ltd.) is liable to pay GST on the gross reinsurance premium payable by the insurer (₹1 lakh), inclusive of the ceding commission (₹50,000).
(12)	**Legal Provision:** Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured is neither supply of goods nor supply of services if lead insurer paid GST on entire premium and hence no GST is charged on the apportionment transaction. **[Para 9 of Schedule III]** **Conclusion:** ➲ The lead insurer (FUTURE Insurance Ltd.) is required to pay the entire GST (CGST and SGST or IGST, as applicable) on the full premium amount paid by the insured – M/s Veer Ltd., of ₹10,00,000. ➲ The co-insurer, BHARTI Insurance Ltd. does not pay GST on its share of the premium separately.
(13)	As per **Section 7** of the CGST Act read with Schedule III, certain activities are treated as **neither** supply of goods **nor** supply of services. 1. **Para 8(a)** of Schedule III provides that supply of warehoused goods before clearance for home consumption is not a supply. Accordingly, the sale of goods by M/s Veer Ltd. to Beta Pvt. Ltd. and the subsequent sale by Beta Pvt. Ltd. to Gamma Ltd., while the goods remain in a bonded warehouse, are **outside the scope of GST.** 2. **Para 8(aa)** provides that supply of goods warehoused in an SEZ or FTWZ before clearance for export or to DTA is also neither supply of goods nor supply of services. Hence, the sale by M/s Veer Ltd. from FTWZ to Delta Industries before clearance is **not liable to GST.** 3. **Para 8(b)** covers high sea sales, i.e., supply of goods by endorsement of documents of title after dispatch from outside India but before clearance for home consumption, and such transactions are also **not treated as supply** under GST. Therefore, no GST is payable on any of the above transactions. IGST becomes payable only at the time of clearance for home consumption or DTA, treating the transaction as import of goods under the Customs Act.

Question 2

Miss Sheetal, Proprietor of Fashion Varieties, is engaged in manufacturing and selling of cosmetic products in Pune (Maharashtra). She is registered in 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 18%, Nil, 40% & 5% respectively

3) Supply of Hair dryer along with the charger to a customer registered in 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	CGST	SGST
18%	9%	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

Sheetal is also planning to run an eating stall at a cinema hall on contract basis where the cinema hall is owned by some other person. She would be supplying food and beverages independent of cinema exhibition service as tickets would not sold by her. She wants to get an advice on the taxability of supply of food and beverages at the cinema hall.

Answer:- A) Computation of GST liability (CGST, SGST and IGST, as the case may be) of Miss Sheetal for the month of November, 20XX

S.No.	Particulars	Amount (₹)	IGST @ 18% (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)
1.	Donation to Sewa Charitable Trust **[Note 1]**	3,00,000	-	-	-
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	-	-	-
	Value of Taxable supply		**32,220**	-	-

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. The tax on this donation will be collected from Sheetal & paid by Sewa Charitable Trust.

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.

B) Legal Provision:-

➲ The cinema operator

i) may run refreshments or eating stalls/ kiosks/ counters or restaurant themselves or

ii) they may give it on contract to a third party.

➲ As per CBIC Clarification, it is clarified that supply of food/beverages in cinema hall **is taxable as 'restaurant service', if:**

a) the food or beverages are supplied by way of or as part of a service, and

b) supplied independent of the cinema exhibition service.

➲ Also, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of **composite supply,** the entire supply **will attract GST at the rate applicable to service of exhibition of cinema,** the principal supply.

Discussion & Conclusion:-

➲ In the given case, Sheetal is thinking to run an eating stall at cinema hall on third party contract basis.

➲ The food and beverages supplied by Sheetal would be independent of cinema exhibition service.

➲ The tickets of the cinema would be sold by cinema operator and not by Sheetal and thus, supply of tickets and food and beverages would not be naturally bundled.

➲ Thus, supply of food/beverages by Sheetal in cinema hall **would be taxable as 'restaurant service'.**

02 Reverse Charge Mechanism & ECO

Question 1

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 Bhagat & Associates, a Partnership firm 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. He also renting immovable property to XYZ ltd. in his personal capacity where he received monthly rent of ₹ 1,00,000.

g) Rental income received by Maharashtra State Government from renting an immovable property to XYZ Pvt. Ltd. what will be your answer if such renting is done by Indian Railway?

h) XYZ Ltd., submits a cab request to Speed Cabs for travelling from Pune to Mumbai of its director Mr. X . Speed Cabs is a mobile application owned and managed by Smart Cab Technologies Ltd. located in India. Company also booked an omnibus of Mr. P on this platform.

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 a director of XYZ Ltd. 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. Also, he has order the food from restaurant located in Marriot where room rent is ₹ 8,000 through Swiggy.
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.

l) If XYZ Pvt. Ltd. cancelled its GST registration and then rents out its commercial property (non-residential) to ABC Pvt. Ltd. who is registered under GST for the purpose of setting up their office.
Would your answer, differ if ABC Pvt. Ltd. opt for Composition Scheme.

m) Mr. X is also an individual delivery partner engaged in providing local delivery services such as delivery of food and groceries within the city of Pune. He supplies these services through an ECO named SpeedCart. His aggregate Turnover is ₹ 18 lakh. Who is liable to pay GST? Whether Mr. X is required to obtain GST registration

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 is 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. ➲ However, GTA has exercised the option to pay tax under forward charge and also issued a tax invoice charging GST at the applicable rate. ➲ Therefore, Vimal Goods transport agency is liable to pay GST under **forward charge.** ➲ 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.
(b)	**Legal Provision:-** As per section 9(3) of CGST Act, if **legal services** are provided by a **firm of advocates** to any **business entity** located in the taxable territory, then the GST is payable on reverse charge basis by recipient. **Discussion & Conclusion:-** ➲ In the given case, VHB & Co. is a **partnership firm of advocates** & provides legal service to a business entity - **XYZ Ltd.** ➲ Therefore, **XYZ Ltd.** is liable to pay GST under reverse charge. [we assume that aggregate t/o of XYZ Pvt Ltd. exceed threshold in PFY]
(c)	**Legal Provision:-** 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 **reverse charge** by recipient. **Discussion & Conclusion:-** ➲ In given case, the government provides the Infrastructural support services to XYZ Ltd. ➲ The Infrastructural support services **are not covered under exceptions** to services notified under reverse charge. ➲ Therefore, the XYZ Ltd. is liable to pay GST under **reverse charge.**
(d)	**Legal Provision:-**As per section 9(3) of CGST Act, if sponsorship services are provided by **any person other than body corporate to any body corporate or partnership firm** located in the taxable territory, then GST is payable under reverse charge by recipient. **Discussion & Conclusion:-** ➲ In the given case, sponsorship services have been provided to an **Partnership Firm,** but the Supplier (i.e XYZ Ltd.) is body Corporate. ➲ Thus, the **reverse charge** provisions **will not be attracted here.** ➲ So, company (XYZ Ltd.) i.e. the **supplier** is liable to pay GST under **forward charge**
(e)	RCM would apply only in case of notified services. So given service is liable to pay tax under forward charge. **Note:-** 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 & no GST would be payable.
(f)	**Legal Provision:-** ➲ As per **section 9(3)** 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. ➲ If director's **remuneration is declared as salaries** 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. ➲ Further, **director's remuneration** which is declared separately other than salaries in company's accounts and subjected to **TDS u/s 194J** of IT Act as fees for professional or technical services are **outside the scope of Schedule III and is therefore, taxable under RCM.** ➲**Further, as per CBIC clarification if director provide service in his personal capacity then, above RCM is not applicable & he is liable to pay tax under forward charge.** **Discussion & Conclusion:-** ➲ In this case, **salary of ₹ 60000 is not taxable as it gets covered under para 1 of Schedule III.** ➲ Further, **₹ 65,000 declared separately other than salaries** by XYZ Ltd's is a consideration for professional services which is **outside the scope of Schedule III and is therefore, taxable.** ➲ The **recipient** of services i.e. XYZ, is liable to discharge the applicable GST on it on **reverse charge basis** ➲ **Renting of immovable property by Mr. X in his personal capacity hence, Mr. X will pay tax on rent of ₹ 1,00,000.**
(g)	**Legal Provision:-** As per **section 9(3)** of CGST Act, if service of renting of immovable property is provided by the Central Government **[excluding the Ministry of Railways (Indian Railways)]**, **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. **Discussion & Conclusion:-** ➲ In the given case, XYZ Pvt. Ltd. is **registered** under GST. ➲ So, here, the **State Government** of Maharashtra provided **service of renting of immovable property** to a registered person located in taxable territory. ➲ Therefore, **XYZ Pvt. Ltd.** is liable to pay GST under **reverse charge.** ➲ If service is provided by **Indian Railway** then, under **forward charge** Indian railway is liable to pay tax.
(h)	**Legal Provision:** As per **sec 9(5) of CGST Act read with CBIC notification,** ➢ if services provided by way of transportation of passengers by a Radio-taxi, motor cab, maxi cab, motorcycle, **or any other motor vehicle except omnibus**, or ➢ if services provided by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company**,** then tax shall be paid by Electronic Commerce operator, if such services are supplied through it. **Conclusion:** ➲ In the given case, Smart cab Technologies Ltd provides motor cab services and also omni bus services to Mr. X (individual). ➲ **Thus,** Smart Cab Technologies Ltd is liable to pay GST on both the transaction.
(i)	**Legal Provision: As per section 9(3) of CGST Act, 2017 read with relevant notification,** 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. **Discussion & Conclusion:** ➲ In the given case, Mr. Poonawala provided service of renting of motor vehicle to XYZ Ltd & opted to pay GST @5% ➲ Therefore, XYZ Ltd is liable to pay tax under Reverse Charge ➲ 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 & 2.5% SGST.
(j)	**Legal Provision:** ➲ **As per sec 9(5) of CGST Act read with CBIC notification,** if services provided by way of accommodation in hotels through ECO, then the tax shall be paid by Electronic Commerce operator. ➲ Also, if restaurant service provide **(other than specified premises)** through ECO then, the tax shall be paid by Electronic Commerce operator . **Conclusion:** ➲ In the given case, Cool Trips provides hotel accommodation to Mr. X in Goa

	➲ Thus, person liable to pay GST is the Electronic Commerce Operator –Cool Trips. ➲ 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. ➲ 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. ➲ Restaurant in Marriot is located in specified premises where room rent is more than ₹7500 hence, it is liable to pay tax. **Note:–** Swiggy (ECO) may collect TCS u/s 52.
(k)	**Legal Provision:** As per **section 9(3) of CGST Act, 2017,** 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. **Conclusion:** ➲ In the given case, service by way of renting of commercial property have been provided to Mr. Chirag for commercial purpose. ➲ Thus, the **reverse charge** provisions **will not be attracted** here. ➲ So, company (XYZ Ltd.) i.e. the **supplier** is liable to pay GST under **forward charge**
(l)	**Legal Provision:** As per **section 9(3)** of CGST Act, if service of renting of immovable property other than residential dwelling is provided by the **any unregistered person to any registered person except composition dealer** located in the taxable territory, then GST is payable by **recipient** under reverse charge. **Discussion & Conclusion:** ➲ In the 1st case, XYZ Ltd. is unregistered and provides services of **renting of immovable commercial property** to ABC Pvt. Ltd who is registered under GST. ➲ Thus ABC Pvt. Ltd. is liable to pay GST under Reverse charge mechanism. ➲ However in the 2nd case, No tax is payable as M/s ABC Pvt. Ltd. opts for **Composition Scheme.**
(m)	➲ In this case, **Speed Cart i.e. ECO is liable to pay GST** as supply of local delivery services through ECO is notified u/s 9(5). ➲ Also, Mr. Jagdish is **not required to obtain GST registration**, even though he supplies services through an ECO, because: ➢ he provides **local delivery services notified u/s 9(5)**, and ➢ his **aggregate turnover does not exceed the threshold limit prescribed u/s 22(1).**

Question 2

Discuss the GST implication in the following case study.

It was a busy Monday morning in Mumbai, and Ravi, a software developer, needed a quick ride to the office. He opened an app FastCabs (an ECO) to book a motorcab. The app connected him to Mohan, an independent driver operating his own motorcab.

After a long workday, Ravi needed a place to stay overnight. He found BudgetStay, an unregistered hotel located near his office. BudgetStay had no GST registration but listed its rooms on an online travel platform operated by an ECO called StayEasy. Ravi booked a room through StayEasy and was charged for his stay.

The next morning, Ravi discovered a leaking pipe in his bathroom. In panic, he used the app QuickFix, which connected him to Suresh, an unregistered plumber. QuickFix was an online platform (ECO) that specialized in providing various home services such as plumbing and carpentry.

After the long day, Ravi decided to have dinner & ordered food through Zomato from The Royal Dine, located inside a luxury hotel. The hotel had a declared tariff of ₹10,000 per unit per day for its rooms, which qualified it as a specified premises under GST law.

Answer:

(a)	Since the ride was booked through FastCabs, thus FastCabs (the ECO) handled the GST collection and payment.
(b)	➲ Since the service was provided through StayEasy (the ECO), GST will be applicable. ➲ However, if BudgetStay exceeded the GST registration threshold (₹20 lakhs turnover), it would have to register under GST, and then it would be responsible for handling the GST, not the ECO.
(c)	➲ Suresh's plumbing service was provided through an ECO (QuickFix), thus GST will be applicable. ➲ If Suresh gets registered under GST in the future, QuickFix would no longer be responsible for collecting the GST.
(d)	➲ Since the restaurant was located in a specified premises (the luxury hotel), no GST was applied to the meal. ➲ The ECO would not charge GST because the restaurant was part of a hotel with a tariff above ₹7,500.

03 COMPOSITION SCHEME

Question 1

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.

a) 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)?

b) If instead of consulting agency, Mr. Amar is running a Restaurant, whether he is eligible for composition?

c) 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?

d) Mr. Amar has registered offices in Maharashtra & Punjab & supplies goods in neighbouring States

e) 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?Is he eligible?

f) 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?

g) 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

h) 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?

i) What are the penal consequences if Mr. Amar opts for the composition scheme & he is involved in violation of the conditions?

j) Are monthly returns required to be filed by Mr. Amar opting to pay tax under the composition scheme?

k) 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:-
  - ⇨ 10% of turnover in a State or UT in the preceding financial year or
  - ⇨ 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 ₹ 50 Lakhs, then such person can opt to pay tax under composition scheme under section 10(2A).

➲ As per **sections 10(2)© & 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)	**No,** Mr. Amar is **not eligible** for composition scheme **u/s 10(1)** because:- ➲ he is supplying consultancy service of ₹15 lakhs in current financial year ➲ which is more than the limit allowed ₹5 Lakhs (i.e., 10% of ₹10 lakhs or ₹5 lakhs, whichever is higher) But, Mr. Amar **can opt** for composition scheme **u/s 10(2A)** as his aggregate turnover in preceding financial year ₹10 Lakhs which is not exceeding ₹50 Lakhs
b)	**Yes,** as Mr. Amar is providing Restaurant services which **are eligible** for composition **scheme u/s 10(1) read with second proviso to section 10(1)** without any limit for providing such service and hence, not becoming ineligible u/s 10(2)(a) also.
c)	**Yes,** Mr. Amar, being a trader, **is eligible** for composition scheme **u/s 10(1)** and his aggregate turnover also is not exceeding ₹1.5 Crore in the preceding financial year.
d)	➲ In the given case, Mr. Amar supplies goods in neighbouring States. ➲ Thus, It is **not eligible** for composition levy **u/s 10** as it is making outward inter-state supply
e)	➲ In given case, Mr. Akbar is a manufacturer of Building Bricks which is a notified good u/s 10(2)(e). ➲ 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.
f)	➲ **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. ➲ This scheme would **be applicable to all registrations separately held by person with same PAN.**
g)	➲ **No,** As per **section 10(4)** of CGST Act, any taxable person opting to pay tax under the composition scheme u/s 10(1) & 10 (2A) ➲ shall neither collect any tax from recipient on supplies made by him nor shall be entitled to any credit of input tax
h)	➲ **No.** As per **section 10(3)** of CGST Act, the option availed of by a registered person u/s 10(1) **lapses with effect from the day** on which his aggregate turnover during a financial year **exceeds the threshold limit** as specified u/s 10(1) of ₹1.5 Crore. ➲ Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form **within 7 days** of the occurrence of such event. ➲ After filing such intimation, he may furnish a statement in prescribed form **within a period of 30 days from the date from which the option is withdrawn** containing details of:- ➤ stock of inputs and ➤ inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn.
i)	As per **Section 10(5)**, if a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, then the person would be **liable to penalty in addition to tax payable by him to be determined as per section 73 or 74 or 74A** of CGST Act.
j)	➲ **No,** Person opting to pay tax under composition scheme are required to electronically filed GSTR-4 on yearly basis. Due date of filing **GSTR-4 is 30th June** following the end of financial year ➲ However, they are required to furnish a statement every quarter or part thereof containing the details of payment of self-assessed tax in **FORM GST CMP-08** till the 18th of the month succeeding such quarter.

k)	➲ No. The option is required to be given electronically in **FORM GST CMP-02,** prior to the commencement of the relevant financial year. ➲ 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 **FORM GST REG-01.**

Question 2

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
Aggregate turnover	**133.00**

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
Turnover in State	**26,50,000.00**
CGST @ 0.5 %	13,250.00
SGST @ 0.5 %	13,250.00
Total	**26,76,500.00**

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
Total	**1,57,500.00**

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.

04 EXEMPTION

Question 1

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 (I) above	1,00,000
b)	Legal advice received from M/s Kanoon Associates, a partnership firm, seeking advice in relation to a tax dispute of the business	50,000

All the transactions stated above are intra-State transactions and amounts given are exclusive of GST, wherever applicable.

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 & GTA Service 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	-	-
Value of taxable supply		9,33,000	-	-
Total tax liability on outward supplies (A)		-	78,250	78,250
ITC available on input services [Note 17]			Nil	Nil
Supplies on which Mr. Pethalal is liable to pay GST under reverse charge:				
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 reverse charge 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.

Question 2

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. Poddar has 3 buildings – A, B & C. Building A is run as hotel which offers accommodation services with a value of supply at ₹18,000 per person per month. A customer books a room for 95 continuous days in it. Building B is a residential building named as i.e Greenwood Hostel in which, 1st floor flat is given on rent to college student for 3 months whose rent is ₹ 25,000 per person per month i.e. ₹ 75,000. Building C is also residential which is given on rent as student residences to students & each residence in it is given on rent to each student for 60 days where rent is ₹ 18,000 per person per month i.e. ₹ 36,000.

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) Deccan Shipping Pvt. Ltd., registered under GST in Andaman and Nicobar islands, provided thepassenger transportation services to the local residents in the ferries owned by it from Neil Island to Havelock Island.

10) GST on payment of honorarium to the Guest Anchors.

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]

12) Service of affiliation provided by Central educational board to a private school.

13) Mr. Shyam Das was admitted to Suraksha Hospital in Mumbai for 2 days in relation to diagnosis of removal of stones from his kidney. For the said services, Suraksha hospital charged following from Mr. Das:

a) Room rent ₹ 7,000 per day for 2 days.

b) Operation theatre charges ₹ 5,000

c) Doctors Consultation Charges ₹ 8,000

d) Other services ₹ 4,000

14) Dunzo, an ECO, provides local delivery services of food and grocery items within city limits. During the year, it delivered 10,000 orders and collected delivery charges of ₹40 per order, aggregating to ₹4,00,000. The deliveries were made by road using two-wheelers, and no consignment note was issued. Dunzo, an ECO claimed exemption under GST on the delivery charges, treating the service as transportation of goods by road, contending that it was neither a goods transport agency nor a courier agency.

Examine the correctness of the claim made by Dunzo and determine the GST liability, if any, with reasons.

15) Mr. Arun, an individual, purchases a health insurance policy from XYZ Insurance Ltd. for himself and his family (spouse and two children). The total premium for the year is ₹ 1,50,000. Separately, Mr. Arun's company also provides a group health insurance policy covering 50 employees for which the employer pays a premium of ₹ 5,00,000. Determine the GST liability on the premiums paid by Mr. Arun (individual plus family policy) and the employer (group policy).

Answer:

1)	Legal Provision:- ➲ 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. ➲ Further, the services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. Discussion & Conclusion:- ➲ However, in given case, services have been provided by the educational institution (viz. IIM, Indore), **to the multinational companies.** Thus, the same is **not exempt** from GST. ➲ **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 exempt.**

2)	**Legal Provision:-** ➲ House-keeping services provided to an educational institution, which is providing pre-school education and a higher secondary school or equivalent, are **exempt** from GST, if such services are performed **in** such educational institution. **Discussion & Conclusion:-** ➲ In given case, house-keeping services provided to Him Varsha Montessori Play School **are exempt from GST,** since housekeeping services have been **performed in such play school itself.**
3)	**Legal Provision:-** ➲ 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 exempt** from GST. **Discussion & Conclusion:-** ➲ In present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank, [a banking company]. ➲ Thus, service provided by Central Government by way of guaranteeing the loan **is exempt** from tax
4)	**Legal Provision:-** ➲ Health care services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempt from GST. ➲ As per **CBIC clarification, food supplied** by the hospital canteen to the in-patients as advised by the doctor/nutritionists is **a part of composite supply** of healthcare services and is not separately taxable. Thus, it is **exempt** from GST. ➲ However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are **taxable.** **Discussion & Conclusion:-** ➲ In given case, **GST is not applicable on the food supplied** by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are **taxable**
5)	**Legal Provision:-** ➲ 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. **Discussion & Conclusion:-** ➲ In given case, the turnover of Mr. Sagar in preceding financial year is **not exceeding the threshold limit** of Rs. 20 lakhs applicable for registration & thus, legal service provided to him by Mr. Ashok is exempt.
6)	**Legal Provision:** ➲ Accommodation services with a value of supply **less than or equal to ₹20,000** per person per month, provided for a minimum continuous period of 90 days, are **exempt** from GST. ➲ Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person is **exempted.** However, accommodation services for students in student residences & accommodation services provided by Hostels, Camps, Paying Guest accommodations & the like **are not covered** in this exemption. **Discussion & Conclusion:**
i)	➢ Building A hotel offers accommodation at ₹18,000 per person per month, and the customer books the room for 95 continuous days. ➢ Since both conditions are met i.e. value of supply is less than ₹20,000 per person per month and the accommodation is for more than 90 days. **Therefore,** this service is **exempt** from GST

	ii)	Renting of 1st floor of Hostel B to student is **taxable** under GST as value **exceeds ₹ 20,000 per person per month & also forms part of exception to other exemption.**
	iii)	Renting of each residence in building C to student is **taxable** under GST as here, the value is not **exceeding ₹ 20,000 per person per month but it is for a period of 60 days** (i.e. less than 90 days) & **also forms part of exception to other exemption.**
7)	**Yes, the contention of the Department is correct.** **Legal Provision:-** ➲ As per **exemption notification,** carrying out an **intermediate production process as job work** in relation to cultivation of plants and rearing of all life forms of animals (except the rearing of horses) for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt. ➲ Further, as per **CBIC clarification, milling of paddy is not an intermediate production process** in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. ➲ Further, processing of paddy into rice is **not usually carried out** by cultivators, but by rice millers. ➲ Milling of paddy into rice also **changes its essential characteristics.** **Discussion & Conclusion:-** ➲ Therefore, in given case, milling of paddy into rice **cannot be** 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 **not eligible for exemption** and GST is payable on the same.	
8)	**Legal Provision:-** ➲ Performance by an artist in folk or classical art forms of music, dance or theatre **is exempt** from GST, if consideration charged for such performance is not more than ₹ 1,50,000. However, exemption will **not apply** to service provided by such artist as brand ambassador. ➲ Training or coaching service in recreational activities relating to arts or culture **by an individual** is exempt from GST. **Discussion & conclusion:** ➲ In given case, classical dance performance by Kesar Maharaj **is exempt** from GST as consideration is ₹ 98,500 which does not exceed ₹ 1,50,000 & also, he is not promoting anything. Hence, **he is not liable to pay GST.** ➲ If Kesar Maharaj (an individual) provides coaching in recreational activities relating to arts, then he is **not liable to pay GST** as this service is **specifically exempted** 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, **GST would be payable** on the same.	
9)	➲ Transportation of passenger services provided by the private operator- Deccan Shipping Pvt. Ltd. are **exempt** from GST. ➲ Transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is also exempt from GST vide exemption notification. ➲ As per the **CBIC clarification** on applicability of GST on private ferry tickets, it is clarified that **exemption would apply to tickets purchased for transportation from one point to another** irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. ➲ The expression 'public transport' means that the transport should be open to public. **It can be privately or publicly owned.** ➲ Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.	
10)	➲ It is **Clarified** by CBIC that supply of all goods & services are taxable unless exempt or declared as **'neither a supply of goods nor a supply of service'**. Services provided by the guest anchors in lieu of honorarium **attract GST liability.**	

	➲ However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST. ➲ Sansad TV and other TV channels invite guest anchors to participate in their shows and pay remuneration to them in the form of honorarium.
11)	**Legal Provision:-** ➲ 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 **upto ₹ 7,500 per month per member** for sourcing goods or services from a third person for common use of its members in a housing society or residential complex **is exempt.** **Discussion & conclusion:** a) It is **exempt** as collection is not exceeding ₹ 7500 per month per member. b) The collection is done as a **'pure agent'** & thus, shall **not be included in value** 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.**
12)	**Legal Provision:-** ➲ Services of affiliation provided by a Central to a school established, owned or controlled by the Central Government is **exempt.** ➲ As per **CBIC clarification,** the affiliation service provided to a private school is not related to admission of students or conduct of examinations & thus, services of affiliation, provided to all other schools by them **are taxable.** **Discussion & conclusion:** ➲ In given case, affiliation service provided by Central educational board to a private school is **taxable.**
13)	**Legal provision:** ➲ Health care services by a clinical establishment are **exempt** from GST. ➲ However, services provided by a clinical establishment by way of providing room having room charges **exceeding ₹ 5,000 per day** to a person receiving health care services are **not exempt.** **Discussion & conclusion:** ➲ In view of the same, only the room rent of ₹ 14,000 (₹ 7,000 per day × 2 days) is **liable** to GST. ➲ Other than room rent, all other nature of services provided by Suraksha Hospital are **exempt** from GST. **Assumption:** Other services are covered under the Health care services & they are exempt.
14)	➲ In the given case, the delivery service is local in nature and is provided through an ECO. Hence, the exemption is **not applicable** & claim made by Dunzo is **incorrect.** ➲ Accordingly, the delivery charges of ₹ 4,00,000 are taxable and GST at 18% amounting to ₹ 72,000 is payable. Therefore, Dunzo is liable to pay GST on the delivery charges collected.
15)	**1. Individual & Family Policy:** ➲ The GST exemption applies to health insurance contracts where the insured is an individual or individual & family. ➲ GST liability: ₹ 1,50,000 × 0% = ₹ 0 **2. Group Policy:** ➲ The exemption does not apply to group insurance policies. ➲ The employer-paid premium of ₹ 5,00,000 is taxable at 18% GST. ➲ GST liability: ₹ 5,00,000 × 18% = ₹ 90,000

05 TIME OF SUPPLY

Question 1

Determine the Time of supply for the purpose of payment of tax under CGST Act, 2017, in the below independent 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 job work basis & raised invoice on 21st February.

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.

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 18%. 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 @18%.

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?

(k) SRK Pvt. Ltd. received legal services from Purohit Consultants who is not registered under GST on March 1, 20XX. The legal services are subject to GST under the RCM. SRK Pvt. Ltd. issued an invoice for the services on March 10, 20XX & supplier has not issued the invoice as it is unregistered. SRK Pvt. Ltd. made the payment for the legal services on May 02, 20XX. Determine Time of Supply.

What would be your answer if Purohit Consultants is registered under GST & invoice is issued by it only & not by SRK Pvt. Ltd. on March 5, 20XX.

L) SRK Ltd. issues gift vouchers redeemable against its goods or services. During a financial year, SRK Ltd. issues 5,000 gift vouchers of face value ₹ 1,000 each, aggregating to ₹ 50,00,000. Out of these, some vouchers are RBI-approved Pre-Paid Instruments (PPIs) and the balance are non-PPI vouchers. The vouchers are sold through distributors, who earn commission at the rate of 5% on the value of vouchers sold. Out of the total vouchers issued, vouchers worth ₹ 40,00,000 are redeemed against supply of goods or services, while vouchers worth ₹ 10,00,000 remain unredeemed even after expiry. Discuss the GST treatment.

Answer:

a) **TOS in case of Supply of fabrics (Supply of goods):**

Legal provision:

➲ As per **section 12(2) of CGST Act, 2017 read with notification 66/2017**, the time of supply of goods shall be earlier of the following dates:

a) Date of issue of invoice or

b) last date to issue the invoice u/s 31.

➲ As per **notification 66/2017**, the time of supply of goods is **not on advance received** & this is applicable **to all registered persons except** composition supplier **& registered person making supply of specified actionable claims .**

➲ 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.

Conclusion: Thus, the time of supply for advance of ₹ 1,00,000 as well as for the balance payment of ₹ 50,000 received for the supply of fabric is **10.03.20XX.**

TOS in case of Jobwork (Supply of services):

Legal provision: ➲ As per **section 13(2)** of CGST Act, 2017, **the time of supply of services** shall be as follows:-

	Cases	Time of Supply
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.

➲ As per **section 31(2),** generally, the tax invoice shall be issued within 30 days of supply of service.

Conclusion:

Thus, 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

b)

Legal Provision:-

➲ As per **section 9(3)** 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.

➲ As per **section 13(3)** of CGST Act, 2017, the time of supply of service taxable under reverse charge is earlier of the following:

a) **Date of payment** made by the recipient.

b) Date immediately **following 60 days** from date of issue of invoice by the supplier.

Discussion & Conclusion:-

➲ Thus, in the given case, time of supply is earlier of:

25th August, 20XX i.e. the date of payment or

20th August, 20XX (61st day from 20th June which is the date of invoice)

➲ Therefore, **the time of supply is 20th August, 20XX.**

Assumption:

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.

c)

Legal Provision:-

As per **section 12(3)** of CGST Act, 2017, if **supply of goods is taxable under reverse charge,** then the time of supply of goods shall be **the earliest** of the following dates:-

a) Date of **receipt of goods** or

b) **Date of payment** which shall be **earlier** of following:-

➲ date entered in the books of account of the recipient or

➲ date on which the payment is debited in his bank account.

c) Date immediately **following 30 days** from date of issue of invoice by the supplier.

(Here, date of invoice is relevant only for calculating thirty days from that date.)

Discussion & Conclusion:-

1) In 1st case, **May 12 will be the time of supply** of goods taxable under reverse charge being **earlier** of:-

➲ Date of receipt of goods i.e. May 12 or

➲ Date of payment made i.e. May 30 or

➲ June 4 being 31st day from date of invoice which is May 4.

2) In 2nd case, **May 30 will be the time of supply**, being the earliest of dates mentioned u/s 12(3).

d)

Legal Provision:-

As per **section 12(4)** of CGST Act, 2017, time of supply of **vouchers** issued by supplier of **goods** shall be:-

a) the date of issue of voucher if the supply is identifiable at that point; or

b) the date of redemption of voucher, in all other cases.

Discussion & Conclusion:-

➲ In the given case, **supply is identifiable** at the time of issue of voucher as the vouchers specifically pertains to footwear.

➲ Hence, the **time of supply** of vouchers shall be the **date of issue of voucher i.e. 15/12/20XX.**

e) **Legal Provision:-**

As per **section 13(5)** of CGST Act, 2017, where it is **not possible** to determine the time of supply under **section 13(2) and 13(3)**, then:-

- In a case where a periodical return has to be filed:- 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
- In any other case:- The time of supply shall be the date on which the tax is paid.

Discussion & Conclusion:-

- In the given case, it is **not possible to determine the time of supply using:-**
  - date of invoice,
  - date of provision of service,
  - date of receipt of payment &
  - date of receipt of services in the books of account of the recipient.
- On the other hand, Mr. Abraham, being an employee of SRK Ltd., is not a **registered person** and hence, the **periodical return is also not to be filed.**
- Therefore, the **date of payment** of GST by Mr. Abraham will be the **time of supply u/s 13(5).**

f) **Legal Provision:**

- As per **section 12(6) 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

Discussion & conclusion:

- Thus, in the given case, the **time of supply of Penalty** on delayed payment of consideration would be the date on which the supplier has received such additional consideration, i.e. **1/12/20XX**

g) **Legal Provision:-**

- As per proviso to **section 13(2)** of CGST Act, if supplier of taxable services receives **upto Rs 1000/- in excess of the amount indicated in the tax invoice,** then the supplier has the **option** to take the date of issue of invoice for such excess amount as the time of supply for such excess.

Discussion & Conclusion:-

(i) **If Z Ltd makes the payment of ₹ 5,500:-**

- In the given case, **excess amount paid is ₹ 500** (which is not exceeding Rs. 1000) as the January, 20XX bill was for Rs. 5000 & payment made Rs. 5500.
- Therefore, **time of supply** of such excess amount is **05/03/20XX i.e. date of invoice for such excess as per proviso to section 13(2).**

(ii) **If Z Ltd makes the payment of ₹ 6,500:-**

- Here, the excess payment is ₹1500 which exceeds Rs. 1000.
- In such case, above **proviso is not applicable.**
- Therefore, as per section 13(2), the **time of supply shall be the date of receipt** of such excess advance amount.

h) **Legal Provision:**

- **As per section 14(b)(ii)** of CGST Act 2017, if the invoice has been issued and payment is received **before** the change in rate of tax, the **TOS** shall be the **Earlier of** date of receipt of payment or date of issue of invoice.
- **As per Sec 14(b)(i)** 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.**

Conclusion:

- In the given case, date of issuance of invoice is on 21st February whereas date of receipt of payment is 28th February, & both have occurred before the change in rate of tax.
- **Thus,** Time of supply of services is **21st February.**
- In the second case, payment is received after the change in rate of tax, but invoice has issued before the change in rate of tax.
- Thus, **Time of supply is 25th February.**

i) **Legal Provision & Discussion:**

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

➤ date of entering payment in the books of account of the supplier (11.08.20XX) or

➤ date on which the payment is credited to his bank account (17.08.20XX).

➲ 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

➲ **If goods and/or services have been** 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

Conclusion:

➲ 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 **date of receipt of payment will be 11.08.20XX** [i.e., earlier of 11.08.20XX or 17.08.20XX].

➲ 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%. **Therefore, the contention of Mr. SRK Ltd. is correct**

➲ 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 **11.08.20XX [i.e., earlier of 11.08.20XX or 14.08.20XX]** 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.

j) **Legal Provision:-**

Where Goods are being sent for approval on Sale/Return basis are removed before Supply taken place, Invoice shall be issued.

(a) Before or at the time of Supply or

(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.

Discussion and Conclusion:-

➲ 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.

k) **Legal Provision:** If supply of services is liable under reverse charge, then time of supply of services shall be the **earliest** of the following dates: **[Sec 13(3)]**

a) Date of payment by recipient (i.e., earlier of book entry or debit to bank)

b) 61st day from supplier's invoice, in cases where invoice is required to be issued by the supplier or

c) Date of issue of invoice (Self Invoice) by the Recipient, in cases where invoice is to be issued by the recipient.

Discussion & Conclusion:

➲ In given case, Purohit Consultants is **not registered** under GST, so it is not required to issue invoice, so condition of 61st day from issuance of invoice by supplier is not relevant here.

➲ Thus, Time of Supply will be **earlier** of following:

a) Date of payment is May 02, 20XX.

b) Date of issue of invoice by SRK Pvt. Ltd. (recipient) is March 10, 20XX.

➲ Therefore , TOS will be **March 10, 20XX.**

➲ In the second case, invoice is issued by Purohit Consultants, So TOS will be **earlier** of:

	a) Date of payment is May 02, 20XX b) 61st date from the invoice issuance date by the supplier i.e May 5, 20XX. ➲ Thus, TOS will be **May 02, 20XX.**
I)	➲ As per **CBIC clarification,** RBI-approved PPIs are treated as **money and are neither goods nor services,** while non-PPI vouchers are treated as **actionable claims** other than specified claims. Such actionable claims are covered under Schedule III and are kept outside the ambit of supply. Accordingly, the issuance or sale of vouchers by ABC Ltd., whether PPI or non-PPI, does not constitute a taxable supply and **no GST is payable** at the time of issuance or sale of vouchers. ➲ The distributors earn commission of 5% amounting to ₹2,50,000, which constitutes a **supply of service under GST and is liable to GST** at the applicable rate. GST is payable on the underlying goods or services supplied at the time of redemption of vouchers worth ₹40,00,000. ➲ **No GST is payable** on vouchers worth ₹10,00,000 that remain unredeemed after expiry, as no supply of goods or services takes place. ➲ Further, Sections 12(4) and 13(4) of the CGST Act relating to time of supply of vouchers have been **omitted,** thereby confirming that GST liability arises only at the time of actual supply of goods or services and not at the time of issuance of vouchers.

Question 2

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

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, earlierof the ➲ date of issuance of invoice (02.07.20XX) and ➲ date of receipt of payment (02.07.20XX) **Therefore, time of supply is 02.07.20XX**
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), **Therefore, time of supply is 15.03.20XY .**
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), **Therefore, time of supply is 20.06.20XY**
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), **Therefore, time of supply is 20.09.20XY**

06 VALUE OF SUPPLY

Question 1

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. b) SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	 8,000 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	Value of Supply shall be transaction value i.e. Actual Price
Less: 3% Trade discount on basic price of machinery	(85,500)	Discount given before or at the time of supply if duly recorded in invoice is **deductible.** [section 15(3)(a)]

Less: Discount for prompt payment	(5,000)	Discount given before or at the time of supply if duly recorded in invoice is **deductible [sec 15(3)(a)]**.
Add: 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, **freight charges are added in the value** of principal supply. [**section 15(2)(c)**]
Secondary packing	30,000	The value of supply shall **include** incidental expenses, including commission and packing charges, charged by supplier to recipient [**section 15(2)(c)**]
Design and engineering Charges	90,000	The value of supply shall **include** incidental expenses, including design & engineering charges, charged by supplier to recipient [**section 15(2)(c)**]
Tax levied by Municipal Authority	25,000	**Taxes other than** those levied under **GST** law are **Includible in value [section 15(2)(a)]**
Subsidy received by the supplier from the State Government	-	The value of a supply includes subsidies directly linked to the price, **excluding** subsidies provided by the State Government & Central Government [**section 15(2)(e)**]
Pre-delivery inspection charges paid by M/s. Dhanuka Ltd.	22,000	Amount that supplier is liable to pay, but incurred by the recipient, is **includible** in the value of supply **[section 15(2)(b)]**
Interest for delay in payment [₹ 12,000 x 100/118] (rounded off)	10,169	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. [**section 15(2)(d)**]
Turnover discount	-	Since discount is not known at the time of supply, it is **not deductible** from the value of supply [**section 15(3)**]
Taxable Value of Supply	**29,38,669**	

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
Less: Input tax credit [ITC] of tax paid on electrical transformer used in the manufacturing process [ITC on food or beverages is specifically **disallowed unless** the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply [Sec 17(5)]. Further, since transformers are used in the course or furtherance of business, **ITC thereon is available as per section 16(1).**]	15,000	15,000
Net GST Payable	**2,49,480**	**2,49,480**

Question 2

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

Kaushal manufacturers Ltd., an Indian company, provides a corporate guarantee of ₹15,00,00,000 to a bank on behalf of its related company, XYZ Pvt. Ltd., also located in India. The actual consideration for the guarantee is ₹ 2,00,000 per annum. XYZ Pvt. Ltd. is eligible for full Input Tax Credit (ITC). What will be the value of the supply of services for GST purposes, and how much GST will be payable if the applicable GST rate is 18%?

You are required to determine the gross GST liability [CGST & SGST and/or IGST] of Kaushal Manufacturers Ltd. for the month of January. Also, determine the value of supply of the service of providing corporate guarantee by Kaushal manufacturers Ltd. to Bank for sanctioning of credit facilities to the company. The GST rate is 18%.

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	20%	20%	40%

You are required to make suitable assumptions, wherever necessary. Assume that all the recipient are registered under GST except specified otherwise.

Answer: 1) 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 (110L x 90%)	4,95,000 (99L*5%)	-	-
Supply of electronic home appliances to Ronn Technomart of Noida, Uttar Pradesh **[Note 2]**	30,00,000	1,50,000 (30L*5%)	-	-
Supply of electronic home appliances to Pune branch of PQR Ltd. **[Note 3]**	44,135 ($690 X 63.94)	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 [1,00,000 x (68.60-60)] (b) 68,000	1,28,000	-	25,600 [1,28,000* 20%]	25,600 [1,28,000* 20%]
Supply of electronic home appliances to wholesale dealers of such appliances in Delhi **[Note 5]**	84,00,000	-	2,10,000 (84L *2.5%)	2,10,000 (84L *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%)
Total GST Liability	**23,132,135**	**6,47,207**	**3,77,200**	**3,77,200**

Notes:

1. ➲ If open market value is not available then the value of goods supplied between **principal & Agent** is 90 % of price charged by the agent for the like goods to an un-related customers. [Rule 29]
   ➲ Since it is inter-State supply, IGST @5% is applicable

2.	➲ If given case, **Kaushal Manufacturers ltd.** holds 75% shares in **Ronn Technomart,** making then related person. [Explain to Sec 15] ➲ Since Technomart is **not eligible for Full ITC,** invoice value can't be accepted as OMV. Hence OMV of goods is ₹ 30,00,000. ➲ Being an inter -State supplies, IGST @ 5% is applicable **[Rule 28]**
3.	➲ If Payment is received in foreign currency, the value of taxable goods shall be determined by using exchange rate as notified by CBIC on the date of time of supply **[Rule 34]** ➲ Here, notified rate on the date of invoice **is ₹ 63.94.** Thus Value of Supply **= $ 690.25 X 63.94 = 44135**
4.	➲ If Currency exchange to / from INR, the value of supply = (RBI reference rate - buying/ selling rate) X total units exchanged = (₹ 68.6 - 68) X ₹ 1,00,000 = ₹ 60,000 ➲ Further, if neither currency in INR, value = 1% of lesser of two foreign currency amount converted into INR **[Rule 32(2)(a)]** ➲ Hence value of taxable supply 1% of lower of following amounts a) $ 1,00,000 X 68 = ₹ 38,00,000 or (b) £ 80,000 X 90 = ₹ 72,00,000 Therfore value of supply = 1% of 68,00,000 = **₹68,000**
5.	➲ Being an intra-State supply of goods, supply of electronic home appliances to wholesale dealers of said appliances in Delhi is subject to **CGST and SGST @ 2.5 % each.**
6.	➲ Supply of electronic home appliances to Anchor electricals Inc (USA) under LUT qualifies as export of goods which is zero rated supply & can be made without payment of IGST **[Sec 16 of IGST]**
7.	➲ Being an intra-State supply of services, supply of repair and maintenance services to Unitech Ltd. of Delhi is subject to **CGST and SGST @ 9% each.**
8.	➲ In case of supply of services, when invoice is issued within time, the time of supply of services is the **earlier** of the date of invoice or date of receipt of payment receipt date. **[Sec 13(2)]** ➲ In the given case, invoice is issued within 30 days, the time of supply is the date of advance received in Junuary & GST is payable on that advance.
9.	➲ In case of supply of goods, GST is not payable on advanced received (Sec 12(2), read with N/N 66/2017). Hence, said advance will be taxed in March and not in January.
10.	➲ In case of dealer in **second hand goods** who has not taken ITC, the value of supply is the difference between selling price & purchase price **[Rule 32(5)]** ➲ Therefore, value of Supply = ₹ 6,20,000 – ₹ 5,00,000 = **₹1,20,000**

2) Legal Provision :-

➲ As per **Rule 28(2)** of CGST Rules 2017, The value of supply of services by a supplier to a related recipient in India, by providing a corporate guarantee to a bank or financial institution, shall be deemed to be 1% of the guarantee amount per annum or the actual consideration, **whichever is higher.**

➲ If the recipient is eligible for full ITC, the value declared in the invoice shall be **deemed to be the value of said supply of services.**

Discussion & Conclusion:

➲ In the given case, 1% of the guaranteed amount is ₹ 15,00,00,000 * 1% = ₹ 15,00,000, which is higher than the actual consideration of ₹ 2,00,000 per annum.

➲ Therefore, the deemed value for GST purposes is **₹15,00,000.**

➲ However, since XYZ Pvt. Ltd. is **eligible for full ITC**, the value declared in the invoice can be **₹2,00,000.**

➲ Hence, GST will be calculated on ₹ 2,00,000. The GST payable at 18% is ₹ 2,00,000 * 18% = **₹36,000.**

Question 3

Fortune 365 is an online money gaming platform operating from UAE. It provides its users a platform to play and win money in different games that are available on its portal.

In the month of December, Player A, an unregistered person located in India, deposited an amount of ₹ 20,000 (inclusive of GST) in the master wallet available on the portal of Fortune 365. Subsequently, following transactions were undertaken by Player A in said month:

i. Player A utilized the amount of ₹ 2,000 from the master wallet towards playing a virtual racing game on the portal. As a winning amount, ₹ 10,000 was credited to the master wallet of Player A.

ii. On another portal operated by Fortune 365 in the name of Bet 180, Player A placed a bet of face value of ₹ 11,000 on an international wrestling match. The amount of such bet was paid by the master wallet of Player A. However, he lost the bet and hence the bet amount of ₹ 11,000 with applicable taxes was transferred from the master wallet to the bank account of Bet 180.

iii. Player A transferred the balance amount from the master wallet to his bank account after the aforesaid transactions. Assume all the above transactions to be exclusive of GST unless otherwise specified.

iv. Rate of GST applicable is 40% (Please ignore the bifurcation of GST amount into CGST, SGST and IGST.)

Based on the information provided above, answer the following questions, providing brief reasons:

(1) Compute the total GST payable on the aforesaid given transactions.

(2) Determine the net amount transferred by Player A to his bank account after the aforesaid transactions.

(3) Ascertain whether Fortune 365 is required to obtain registration under GST in India. Will your answer be different if Player A is registered under GST in India?

Answer:-

Legal Provision:- The value of online money gaming is the total amount paid or deposited by or on behalf of the player including virtual digital assets [Rule 31B)]

Also for betting, the value of Supply is 100% of face value of the bet [Rule 31A]

In accordance with the above provisions:

(1) Total GST payable on given transactions is as follows:

(i) Value of supply of online money gaming [Rule 31B] =

= Initial deposit of ₹ 20,000 (inclusive of GST) by Player A with Fortune 365 after excluding GST= ₹ 14,285.71 (₹ (₹20,000 x 100/140)

GST payable = ₹ 14,285.71 × 40% = ₹ 5,714 – [A]

(ii) Value of supply of online bet [Rule 31A] = 100% of the face value of the bet = ₹ 11,000

GST payable = ₹ 11,000 × 40%) = ₹ 4,400 – [B]

Thus, total amout of GST collected by Govt [A] + [B] = ₹ 10,114

(2) Total amount transferred by Player A to his bank account from the master wallet is as follows:

Particulars	**Amount (₹)**
Initial Deposit	20,000
Less – GST on deposit	5,714
Less – Payment for virtual racing game	2,000
Add – Winning from virtual racing game	10,000
Less – Payment for bet placed on Bet 180	11,000
Less – GST on the bet place on Bet 180	4,400
Net balance available for transfer	**6,886**

3) ➲ Any person supplying online money gaming from outside India to person in India, must compulsorily register under GST in India. **[Sec 24]**

➲ Thus Fortune 365, operating from UAE is mandatorily required to register in India, regardless of whether player A is registered under GST in India or not.

Question 4

ABC Manufacturers sells goods to XYZ Ltd. for ₹10,00,000 and charges GST @18%. Later, ABC Manufacturers issues financial/commercial credit notes or post-sale discounts. An independent post-sale discount of ₹5,00,000 is allowed which is not linked to any end-customer agreement. Another post-sale discount of ₹4,00,000 is linked to an agreement with end customers. XYZ Ltd. also performs promotional activities such as advertising and co-branding for ABC Manufacturers for a consideration of ₹3,00,000. Discuss the GST treatment on post-sale discounts, credit notes, and promotional activities.

Answer:-

➲ **ITC:** Full ITC is available to XYZ Ltd. on goods purchased for ₹10,00,000(GST ₹1,80,000). Financial/ commercial credit notes do not reduce the original tax liability, so no ITC reversal is required.

➲ **Post-Sale Discounts:**

- **Independent discounts:** For example, an independent discount of ₹5 ,00,000 is a price adjustment only and is not included in taxable consideration.
- **Linked to end-customer agreement:** A discount of ₹ 4,00,000 linked to obligations towards end customers acts as inducement and is included in consideration for GST.

➲ **Promotional Services:** Promotional activities performed by XYZ Ltd., such as advertising or co-branding for ₹ 3,00,000, are taxable only if separately agreed and charged. GST is payable on the value of these services. Incidental promotional activities without separate consideration do not attract GST.

07 Input Tax Credit

Question 1

A) 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.

Particulars	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
Purchases a demo vehicle for demonstration purposes.	50,000

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, 20YY are as follows:

Particulars	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 18%

(iii) Supply of man power operator service 40%

Compute the amount of input tax credit available and also the net GST payable for the month of

November 20YY by giving necessary explanations for treatment of various items.
Note: Opening balance of input tax credit is Nil

B) During the FY 20XX-YY, the company's GST registration was cancelled on 15th August 20XX. Subsequently, the cancellation was revoked on 5th February 20YY by an order from Appellate Authority. ABC Ltd. filed return for the period for which registration stood cancelled on 25th February 20YY. ABC Pvt. Ltd. has an invoice dated 20th July 20XX for goods supplied worth ₹1,00,000. Can ABC Ltd. claim the ITC for the invoice dated 20th July 20XX. Discuss with relevant provisions.
Note: ABC Ltd. has furnished annual return on 15th December 20YY.

Answer:-

A) Computation of net GST payable by ABC Company Ltd.

Particular	GST payable (₹)
Gross GST liability **[Refer working note (2) below]**	3,61,200
Less: Input tax credit **[Refer working note (1) below]**	3,47,000
Net GST liability	**14,200**

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
Purchases a demo vehicle for demonstration purposes **[Note 17]**	50,000
Total ITC available	**3,47,000**

(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	18%	94,500
Service charges for supply of manpower operators **[Note 18]**	12,35,000	18%	2,22,300
Gross GST liability			**4,41,800**

Notes:

1) ITC of health insurance is **blocked** since said services are not obligatory for employer to provide to its employees under any law.[**section 17(5)(b)**]

2) 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. [**Proviso to section 16(2)**]

3) 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.[**Section 17(5)(c)**]

Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be **allowed** since such services are being used for installation of plant and machinery.

4) ITC on capital goods directly sent to job worker's premises under challan is **allowed.[Section 19(5)read with rule 45]**

5) ITC on motor vehicles is **allowed** only when the same are used for:

(i) for making taxable supply of-

a) further supply of such vehicles,

b) transportation of passengers,

c) 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. [**Section 17(5)(a)**]

6) 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.[**Sec 17 (5)(b)(i)**]

7) **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.[**sec 17(5)(b)**]

8) ITC in respect of goods that are disposed of by way of gifts **is blocked.[sec 17(5)(h)]**

9) 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.[**Sec 17(5)(d)**]

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) ITC is **allowed** on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit. [**section 17(5) (ab)**]

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

11) ITC is **available** on goods used in the course or furtherance of business.[**sec 16(1)**]

12) 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 [**section 16(3)**]

13) ITC is **blocked** on goods stolen. [**sec 17(5)(h)**]

14) 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. [**Explanation to section 16(2)(b)**]

15) ITC is blocked on goods on which tax is paid under composition scheme. [**sec 17(5)(g)**]

16) **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.[**section 16(2)(aa)**]

17) CBIC clarified that if the vehicle is solely used for demonstration purposes and not for passenger transport or training, thus ITC is not blocked u/s 17(5)(a).

18) ➲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 **18%, [section 8(a)].**

B) Legal Provision:

➲ If the registration of a RP is cancelled u/s 29 & subsequently revoked u/s 30 or by an order from the Appellate Authority, Appellate Tribunal, or court, the RP can claim ITC for the invoices or debit notes that were not restricted u/s 16(4) on the date of cancellation. [**Sec 16(6)**]

➲ Its ITC can be claimed in the return filed till the **later of** following dates:

a) Earlier of 30th Nov of following year or date of furnishing Annual return.

b) Return filed for period from the date of cancellation of registration or the effective date of cancellation of registration till the date of the order revoking the cancellation, if such return is filed within 30 days from the date of the revocation order.

Discussion & Conclusion:

➲ In the given case, ITC for the invoice dated 20th July 20XX will be claimed by the **later of:-**

a) 30th November 20YY i.e. the earlier of 30th November 20YY or 15th December 20YY or

b) 25th February 20YY i.e. the date of filing return for the period from 15th August 20XX (cancellation date) to 5th February 20YY (revocation order date).

➲ Thus ABC Ltd. must claim the ITC by **30th November 20YY.**

Question 2

'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) GTA has not exercised the option to pay tax itself. Tax is payable on such services @5%.

2) Wherever applicable, GST under reverse charge is payable @ 5% by All-in-One Stores. Rate of GST in all other cases is 18%.

3) 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.

4) Wherever applicable, the amounts given are exclusive of taxes.

5) 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_1	Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes
T_2	Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies
T_3	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	[₹2,50,000*18%]	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
Total input tax involved in a tax period (October,20XX) [T]		**11,57,000**

Step 2 :- Computation of T_1 , T_2 , T_3 , T_4

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	
Input tax exclusively attributable to non-business purposes [T1]	**38,000**	
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 **exempt** 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
Input tax exclusively attributable to exempt supplies [T2]	**5,000**	
GST paid on rent a cab service availed for business purpose	4,000	**As per Sec 17(5)(b)** of CGST Act, ITC is **blocked** 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	**As per Sec 17(5)(h)** of CGST Act, ITC on goods disposed by way of free samples is blocked
Input tax for which credit is blocked under section 17(5) of the CGST Act, 2017 [T3]	**8,000**	Since GST paid on inputs used for **personal purposes** has been considered while computing T1, the same **has not been** considered again in computing T3
GST Paid on taxable items	9,90,000	
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items	5,000	
Input tax exclusively attributable to taxable supplies [T4]	**9,95,000**	

Step 3 : - Computation & Apportionment of credit

S.No.	Particulars	Computation (₹)
i .	$C1 = T - (T_1 + T_2 + T_3)$	11,57,000-(38,000+5,000+8,000)
	ITC credited to the electronic Credit ledger	11,06,000
ii.	$C_2 = C_1 - T_4$	11,06,000 - 9,95,000
	Common Credit attributable	1,11,000
iii.	$D_1 = (E / F) \times C_2$ Where, 'E' is the aggregate value of exempt supplies during he tax period i.e. 12,00,000 + 3,00,000 'F' is the total turnover in the State of the registered person during he 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) * 1,11,000
	ITC attributable towards exempt supplies	**25,615**

iv.	$C_3 = C_2 - D_1$	1,11,000 - 25,615
	Eligible ITC attributed for effecting taxable suplies	**85,385**

* 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
	Total Taxable supplies	**50,00,000**
iii.	**GST payable under Forward Charge @ 18%**	**9,00,000**
iv.	**Less:** ITC ITC ₹ 11,06,000 Less: ITC reversed ₹ 25,615	**10,80,385**
v.	**Net GST payable [A]**	**Nil**
vi.	ITC to be carried forward	1,80,385
vii.	GST liability under reverse charge ➲ Freight paid to unregistered GTA for inward transportation of taxable items [₹1,00,000 x 5%] ➲ Freight paid to unregistered GTA for inward transportation of exempted items [₹80,000 x 5%] ➲ Freight paid to unregisteredGTA for inward transportation of non-taxable items [₹20,000 x 5%]	 5,000 4,000 1,000
	****Total output tax liability under reverse charge [B]**	**10,000**
	Net GST liability [A] + [B]	**10,000**

** **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 3

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	-	**As per Rule 42 of the CGST Rules 2017**, 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	**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
Total		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)	(A)	36,000	90,000	-	-
Total input tax credit on capital goods used commonly (Tc) (Total = ₹ 2,52,000) [Note 1]		**36,000**	**90,000**	**72,000**	**54,000**
Credit attributable to tax period (Tm)	Tc/60	600	1500	1200	900
Credit to be reversed/Payment (Te)	Tr X E/F (E=10,00,000) (F=25,00,000) 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]	(Tie)		54,000 (90,000* 12Q*5%)		

Amount of common Credit = 36,000 + 90,000 + 72,000 + 54,000 = 2,52,000

Amount of common Credit Attributable to exempt suppply = 240 + 600 + 480 + 360 = 1680

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 × 5% × 12 quarters **= ₹54,000**

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)
	IGST payable from Electronic Cash Ledger (6-9)		**1,36,680**

Question 4

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 @ 5% on 28.10.20XX

However, with effect from 01.11.20XX, exemption available on 'Z' was withdrawn by the Central Government and GST @ 5% 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)

Legal Provision:

1) If a person apply for registration **within 30 days** of becoming liable, he can claim ITC on inputs in stock or in semi-finished goods & inputs in finished goods as on the day before becoming liable to pay tax **[Sec 18(1)(a)]**
2) A supplier is **liable to be registered** in the State/UT from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit.[**section 22**]
3) If a person apply for voluntary registration then, he can claim ITC on inputs in stock or in semi-finished goods & inputs in finished goods as on the day before the date of granting registration [**section 18(1)(b)**]
4) However, he cannot claim ITC of capital goods as on the day before the he become liable to registration under (1) or the date of granting registration under (2)
5) ITC on capital goods exclusively used in exempt supplies is now allowed **[Rule 43]**
6) If a person exist the **composition scheme**, then he claim ITC on inputs in stock or in semi-finished goods or inputs in finished goods in stock as well as capital goods as on the day before liable to pay tax [**section 18(1)(c)**]
7) When an exempt supply become taxable, the RP can claim ITC on inputs in stock or in semifinished goods or finished goods in stock as well as **CG** exclusively used for the exempt supply as on the day before the supply become taxable [**section 18(1)(d)**]
8) **In case (6) & (7)** credit of capital goods can be claimed by after **reducing 5% per quarter** or part thereof from the date of invoice. **[Rule 40]**
9) In all above case, ITC of inputs & CG to be availed **within 1 year** from the date of issue of invoice.[**sec 18(2)**]

Discussion & Conclusion:

1)

- ➲ In this case, the exemption on product Z was withdrawn on 1st Nov. Since SNP Pvt. Ltd.'s T/o till Sep end is 40 Lakhs (Which exhausted threshold limit if it is exclusively engaged in supply of goods). It become liable for registration on 1st Nov.
- ➲ Even though, it applied for registration within 30 days & got registered, ITC on capital goods is not allowed. However, ITC on inputs in stock & in semifinished or finished goods as on 31st Oct is allowed.

	Eligible ITC =₹1,800 (₹36,000 * 5%)
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 ₹1,800 i.e (₹36,000 x 5%)
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
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 ₹ 1,800 i.e (₹ 36,000 x 5%) ➲ Thus, **Total ITC will be ₹ 3,25,800** i.e (₹ 3,24,000 + ₹ 1,800)
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:

➲ In case of sale , Merger, demerger etc. with transfer of liabilities, the un-utilised ITC in e-credit ledger can be transferred to the new entity [**section 18(3)**]

➲ In case of demerger, ITC must be apportioned based on the value of assets transferred as per demerger scheme. **[Rule 41]**

➲ **'Value of assets"** refers to the total business assets, whether or not ITC was availed on them.

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 (₹ 56000 + ₹ 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	1,96,000	87,111 (1,96,000 X 20/45)	1,08,889 (1,96,000 X 25/45)

c)

The contention of M/s Blue India Ltd. is not valid in the eyes of law.

Legal Provision:

➲ If a registered person opt for composition scheme or his supplies becomes wholly exempt, then he must **pay or reverse** ITC on inputs in stock or in semi finished / finished goods in stock as well as capital goods (on prorata basis) as on the day before such change. **[section 18(4)]**

➲ This payment can be made through E-credit or E-cash ledger, after payment remaining ITC if any, will **lapse.**

Discussion & conclusion:

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

Particulars	Amount(₹)
Inputs lying in stock (₹ 1,30,000 * 18/118)	19,831
Inputs in process (₹ 53,100 * 18/118)	8,100
Inputs contained in finished goods lying in stock (₹ 295000 * 30% * 18/118)	13,500
Input tax on capital goods used for 9 months taking residual life as 5 years(₹ 90,000 *51/60) {As per Rule 44, 51 months being the residual life of CG of total 60 months}	76,500
Amount to be paid by Blue India Ltd.	**1,17,931**

➲ The aforesaid amount can be paid by utilizing the balance in electronic credit ledger.

The remaining balance in E-credit ledger of ₹ 57,069 i.e. (₹ 1,75,000 – ₹ 1,17,931) **shall lapse.**

➲ If balance in electronic credit ledger is ₹ 1,10,000:

Then, M/s Blue India Ltd. will have to **pay in cash** is ₹ 7,931 i.e. (₹ 1,17,931 - ₹ 1,10,000)

d) **Legal Provision:**

➲ As per **section 18(6) of CGST Act read with rule 40(2) of the CGST Rules, 2017,** if capital goods/ plant and machinery on which input tax credit (ITC) has been taken, are supplied outward by a registered person, he must pay an amount that is **higher** of the following:

- ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods or
- Tax on transaction value of such goods determine under section 15.

➲ If refractory bricks, moulds & dies, jigs & fixtures are supplied as scrap, taxable person may pay tax on transaction value of such goods determined u/s 15.

Discussion & conclusion:

➲ Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal Ltd. shall be 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)**	1,41,750
Duty leviable on transaction value (₹ 7,50,000 × 18%) **(B)**	1,35,000
GST payable towards disposal of machine is higher of (A) and (B)	**1,41,750**

Thus, M/s Agarwal & Agarwal Ltd. is required to pay GST amounting to ₹ 1,41,750 at the time of sale of machinery

➲ In the 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 ₹ 10,800 i.e (₹ 60,000 × 18%)

Question 5

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	Particulars	CGST	SGST	IGST
i)	Input services used by all units and centres			
	a) Eligible Itc under the provision of the GST Law	1,20,000	1,20,000	2,40,000
	b) Ineligible ITC in terms of section 17(5) of the CGST Act, 2017	40,000	40,000	80,000
ii)	Inputs used by Pune unit and Kolkata centre	60,000	60,000	
iii)	Input services used by Chennai unit and Bengaluru centre (ITC pertaining to such invoices is eligible ITC under the provisions of the GST law)	30,000	30,000	10,000

Chennai unit manufactures exempted products.

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

Answer:- Computation of ITC to be distributed by ISD

S.No	Particulars	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]**		30,000 (IGST)		40,000 (IGST)

Notes:

1	IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 specifically attributable to Pune unit will be distributed as IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 respectively, only to Pune unit, since recipient is located in the same State in which ISD is located.[**Section 20(2)(c) read with Rule 39**]
2	Total GST credit of ₹ 36,000 specifically attributable to Chennai unit will be distributed as IGST credit of ₹ 36,000, only to Chennai unit, since recipient & ISD are located in different States [**Sec 20(2)(c) read with Rule 39**]
3	➲ Eligible ITC of CGST [₹ 1,20,000], SGST [₹ 1,20,000] and IGST [₹ 2,40,000] will be distributed among the units and centres in the ratio of their turnover of the last quarter.[**Section 20(2)(e) read with Rule 39 (1)(b)**] ➲ Ratio of T/o of Units & Centres in last Qtr: : 20 L: 30 L: 10 L: 40L= 2: 3: 1: 4 **Therefore**

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

4	➲ 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 [**Section 20(2)(e)read with Rule 39(1)(b)**] ➲ Ratio of T/o of Units & Centres in last Qtr : 20L: 30L: 10L: 40 L = 2: 3: 1: 4 **Therefore,**

Unit/Centre	CGST (₹)	SGST (₹)	IGST (₹)
Pune	40,000 x 2/10 = 8,000	40,000 x 2/10 = 8,000	80,000 x 2/10 = 16,000
Chennai	-	-	1,60,000 x 3/10 =48,000
Kolkata	-	-	1,60,000 x 1/10 =16,000
Bangaluru	-	-	1,60,000 x 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	➲ 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 [**Section 20(2)(d) read with Rule 39(1)(b)**] ➲ Ratio of T/o of Units & Centres in last Qtr: 30L: 40L = 3:4 ➲ Therefore,

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

08 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 1

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. (registered in 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 (registered in Pune). While the goods were being packed in Uttar Pradesh godown of Vidhyut Pvt. Ltd., Bakul got an order from Shreyas (registered in 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. (registered in 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 & registered 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. Vidhyut Pvt. Ltd. receives an order from Mr. Sharma, an individual (unregistered person) residing in Delhi. Mr. Sharma purchases a dining table and requests delivery to his residence in Delhi. VidhyutPvt. Ltd. issues an invoice with Mr. Sharma's Delhi address and arranges for the delivery of the dining table through a third-party logistics provider. Determine Place of Supply and GST implications.
   Will the place of supply still be same, if Mr. Sharma instructs Vidhyut Pvt. Ltd. to deliver the dining table to another address located in Punjab which is recorded in invoice as address of delivery whereas the billing is done at Delhi's address?

Answer:- Determination of POS 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, Gujarat	➲ When supply involves movement of goods, the POS is the place where the movement of goods terminate for delivery regardless who arranges transport. ➲ Here supplier is Uttar pradesh & goods are delivered in Surat. This is an inter state supply & IGST is payable.
2	Goods sold to SEZ unit	Uttar Pradesh	➲ Supply of goods to SEZ unit shall be treated as inter-state supply as per the given CBIC clarification & thus, IGST will be charged.

3	Goods sold to Bakul & further sold by Bakul to Shreyas	Pune, Maharashtra & Shimoga, Karnataka in two cases, respectively	In case of Bill to Ship to transaction, where the goods are delivered to a person on the direction of third party, the third party deemed to have received the goods & the POS is the third party's principal place of business. [Sec 10(1)(b) of IGST Act] 1) For Supply between Vidyut Pvt. Ltd. to Bakul (Pune, MH) The goods are delivered to Shreyas on the direction of Bakul. hence POS is Pune (MH) [Bakul's Location]. It is inter-state supply & IGST is payable 2) For Supply between Bakul (Pune, MH) to Shreyas (Shimoga, KA):- Since movement is involved in supply of goods, hence place of Supply is Shimoga (KA) where the movement of goods terminate for delivery. Hence it is inter-state supply & IGST is payable.
4	Machine leased & later sold to MB Pvt. Ltd.	Karnataka	➲ When supply **does not invoice movement** of goods, **the POS is the location of goods of the time of delivery** [Sec 10(1)(c) of IGST Act]. ➲ In given case, Since machine is sold on an 'as is where is basis" with no movement, the POS is karnataka (where the machine is located). ➲ As the LOS & POS are in different State, it is an inter state supply & IGST is payable.
5	Machine sold to Pure Refineries	Kutch, Gujarat	➲ When the goods assembled or installed at site, **the pos is the place of such installation** or assembly. [Sec 10(1)(d) of IGST Act] ➲ In given case, the machine is assembled at Kutch, So, POS is Kutch, even though the recipient, Pure refineries is in Maharashtra. ➲ Since LOS is UP & POS in Gujarat. it is an Inter State Supply & IGST is payable
6	Biscuit packets sold to Indian Airline who further sold it to passengers	Lucknow, Uttar Pradesh in both cases	➲ In given case, place of supply of biscuit packets sold by Vidhyut Pvt. Ltd. to Indian Airlines is **Lucknow u/s 10(1)(a)** of IGST Act. ➲ Further, the place of supply of biscuit packets sold by Indian Airlines to the passengers in Kolkata-Guwahati route is **Lucknow u/s 10(1)(e)** of IGST Act. ➲ In both cases, the location of supplier and place of supply are in Uttar Pradesh & hence, chargeable to **CGST & SGST, being intra-state supply.**
7	Import of goods	Noida, Uttar Pradesh	➲ The place of Supply of goods imported into India shall be the location of importer i.e. Noida, Uttar Pradesh. ➲ It is **inter-state** supply u/s 7(2) of IGST Act & liable to **IGST.**
8	Export of spices	London	➲ In given case, supplier is located in India whereas place of supply is **outside India** as per **section 11** of IGST Act. ➲ It is **inter-state** supply u/s 7(5)(a) of IGST Act & liable to **IGST.**
9	Goods sold to Mr. Sharma	Delhi	➲ If supply of goods to un-registered person, the POS is **a) the address of recipient if it recorded in invoice** **b) If it is not recorded, then location of supplier.** ➲ Also, as per CBIC clarification, if billing & delivery address differ, then POS is delivery address in the invoice [Sec 10(1)(a) of IGST Act] ➲ In given case, invoice of Vidyut Pvt. Ltd. records Mr. Sharma's address in Delhi. Hence POS is Delhi. ➲ LOS in UP & POS in Delhi, Hence it is inter -state supply & IGSTis payable.
		Punjab	Billing & delivery address differ & delivery address in Punjab. Hence POS is in Punjab. LOS is in UP & POS in Punjab, hence it is inter-state supply & IGST is payable.

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

Question 2

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. What will be your answer if, Mr. Aatmaram (unregistered) & his family is to be shifted to Dubai & accordingly, his household goods are to be transported from Kanpur to Dubai ?
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.

11. Zebrex, registered in Delhi, enters into a contract with Shine Ltd., an advertising company, located and registered in Gurugram, Haryana, to arrange the display of an advertisement of Zebrex's newly launched product on a hoarding placed in Marine Drive-Mumbai, Maharashtra for initial 3 months of the launch of the product. Shine Ltd., in turn, enters into a contract with the owner of Seaside Hotel located and registered in Marine Drive-Mumbai, Maharashtra for display of the advertisement on a hoarding placed in the lawn of the hotel. What will be the place of supply of service(s) provided in the given case?

Answer:-

1)	**Legal Provision:-** The POS of services generally (Other than covered u/s 12(3) to Sec 12(4)) is ➲ For services to **RP, POS is location of such RP** ➲ For services to URP, POS is location of recipient if address available in supplier records other location of supplier. [Sec 12(2) of IGST Act] **Conclusion:-** I) For the services supplied to Mr. B (RP), the POS is Noida (UP) ii) For the service supplied to Mr. C (URP) whose address is available, the POS is New Delhi, the Mr.C's location iii) For the service supplied to Mr.C (URP) whose address is not available, the POS is new Delhi, Mr. A's Location.
2)	**Legal Provision:-** ➲ The POS for services related to immovable property e.g. construction engineers, hotel or lodging etc. is the location of immovable property where it is located or intended to be located. ➲ However, if the property is located outside India, then the POS is the recipient's location [Sec 12(3) of IGST Act] **Discussion & Conclusion:-** i) The place of supply of construction service is the location of factory building i.e., **New Delhi.** ii) The place of supply of architectural service is the place where the building is intended to be located i.e., **New Delhi.** iii) The place of supply of lodging accommodation service is the location where the hotel is located i.e., **New Delhi.** iv) Since the immovable property is located **outside India,** the place of supply of service provided by Mr. X is the **location of recipient i.e., Mumbai** and not the place where the immovable property is located (Australia).
3)	**Legal Provision:-** ➲ The place of supply of restaurant and catering services & beauty treatment service shall be the location where the services are actually performed.**[section 12(4)]** **Discussion & Conclusion:-** i) The place of supply of beauty treatment service provided by Mr. Timmy Ferreira is **Jaipur, Rajasthan** where the service of doing makeup is actually performed. ii) The place of supply of restaurant service taken by them is **Jaipur, Rajasthan** where the service is actually performed.
4)	**Legal Provision:-** ➲ If training or performance appraisal services provided **to RP, the POS is the location of such RP** & **if supplied to URP** then **POS is the place where service is actually performed.** [Sec 12(5) of IGST Act] ➲ If **accommodation services** provided for organising official or business functions, **the POS is the location of immovable property [Sec 12(3)]** **Discussion & Conclusion:-** In given situation, **two supplies** are involved. The place of supply in respect of each is as under:- i) For the Services provided by Mindsharp Associates to Dobriyal Technocrats Ltd. (a registered recipient) by

	providing motivational training to its top management, the POS shall be the location of Dobriyal Technocrats Ltd., i.e. **Gurgaon, Haryana.** 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, the POS shall be the location of the Hotel Chumchum, i.e. **Neemrana, Rajasthan.**
5)	**Legal Provision:-** ➲ The POS for transportation of goods or services (including mail or courier) is ➤ If recipient is RP = Location of such RP ➤ If recipient is URP = Place where goods are handed over for transport [Sec 12(8) of IGST Act] ➲ Even if goods are transported outside India, still above provisions applies, as supplier & recipient both are in India. **Discussion & Conclusion:-** i) Since Aatmaram is an unregistered, POS is where goods are handed over for transport, i.e. **Kanpur.** ii) If Aatmaram were registered, POS would be his location i.e. **Gujarat.** **iii)** Even though goods are to be transported **to Dubai, Since Aatmaram is un-registered. POS remains in Kanpur.**
6)	**Legal Provision:-** ➲ In case of passenger transport services supplied to RP then POS is the location of such RP & if services supplied to URP then POS is a place of embarkation for continuous journey. ➲ However , if a right to passage is issued for future use to URP & embarkation point is not known then pos shall be determined by general Rule i.e-u/s 12(2) **[Sec 12(9) of IGST Act]** **Discussion &conclusion** (i) Since return journey is treated as separate journey & Mr.Shyam is URP , hence pos for **outward journey is New Delhi & for return journey is Mumbai** i.e . place of embarkation of passenger. (ii) If Mr. Shyam is **RP** ,then POS of both Journey **is chennai , - Tamilnadu** (iii)For a prepaid metro card issued for future use where place of embarkation is not known & also Mr. Shyam is URP, then pos is Gurugram , Haryana where address exist in the record of Mr.Shyam
7)	**Legal Provision:-** POS of services supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle shall be the location of 1st scheduled point of departure of such conveyance for the journey.[**Section 12(10)**] **Discussion & Conclusion:-** Thus, the POS of service in given case is **Bangkok** i.e. the location of first scheduled point of departure of aircraft for the journey.
8)	**Legal Provision:-** The POS of services of installation of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services. [**Sec 12(11)**] **Discussion & Conclusion:-** Thus, the place of supply of service is **Kolkata** in this case i.e. the location where the telecommunication line is installed.
9)	**Legal Provision:-** The POS for banking & other financial services including stock broking is the location of recipient as per record of supplier & if the recipient's location is not available in records , the POS is location of supplier. **Discussion & Conclusion:-** i) In case of service received by Bholunath, the POS is the LOR of services in the records of the supplier bank, **i.e. New Delhi.** ii) In case of service received by Bholunath's brother- Mr. X, the POS is the LOR of services in records of supplier i.e. **Ranchi, Jharkhand.** iii) The POS of service received by Bholunath's wife is the LOS of services i.e. **Kullu-Manali, Himachal Pradesh** as the LOR of services is not available in the records of supplier.

10)	**Legal Provision:-** ➲ As per **section 12(13)** of IGST Act, the POS of insurance services provided to:- a) a RP shall be the location of such **registered recipient &** b) an URP shall be the **location of recipient of services in the records** of supplier. **Discussion & Conclusion:-** The POS is the location of recipient of services in the records of supplier i.e. **Patna** as the medical insurance policy is taken by an URP.
11)	In the given case**, two supplies are involved:** (i) Services provided by Shine Ltd. to Zebrex by way of arranging the display of the advertisement of its newly launched product, and (ii) Services provided by Seaside Hotel to Shine Ltd. by way of placing a hoarding in the lawn of the hotel. The POS in each of the above supplies is as follows:
1)	**Legal Provision:-** The **POS** of services (not covered u/s 12(3) to 12(4)) provided to RP is the location of the RP **[Sec 12(2) of IGST Act]** **Discussion & Conclusion:-** Advertisement services provided by Shine Ltd. to Zebrex are not covered u/s 12(3) to 12(14). Hence as per default rule the POS is the location of Zebrex, i.e. **Delhi.**
2)	➲ As per **CBIC clarifications** when there is a sale or grant of rights to be space on hoarding/ structure fixed to land , it is treated as supply related to an immovable property , as the structure is embedded in the earth. ➲ The POS of Services related to immovable property is the location of such property, hence pos is Mumbai, Maharashtra.

Question 3

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:-

<u>1. Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert:-</u>

Legal Provision:- The POS for services by way of **admission to cultural,** artistic, entertainment events, or amusement parks, including ancillary services, **is the place where the event is actually held.** (sec 12(6) of IGST Act)

Discussion & Conclusion: Musicera Pvt. Ltd. (Ludhiana, Punjab) organized a music concert at Hotel Dumdum, Gurugram (Haryana), **POS is at Gurugram, Haryana.**

Since LOS (Punjab) & POS (Haryana)are in different States, it is an **inter-State supply**, and IGST is applicable.

- ➤ **Value of supply = 400 tickets × ₹5,000 = ₹20,00,000**
- ➤ **IGST @18% = ₹20,00,000 × 18% = ₹3,60,000**

2. Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by organising the music concert.

Legal Provision:- The POS for service of **organizing a cultural,** artistic, sporting, scientific, educational, or entertainment event is provided to a RP is the **location of the such RP, regardless of where the event is held.**

- ➲ But If the recipient is URP then POS is at Place where the event is actually held
- ➲ If the event is held outside India, POS is the Location of the recipient (sec 12 (7) of IGST Act)

Discussion & Conclusion:

a) ➲ The POS of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) for organising the music concert is the **location of RP, i.e. Ludhiana (Punjab).**

➲ Since, the LOS (Delhi) and the POS (Ludhiana, Punjab) are in different States, **IGST will be leviable =** ₹10,00,000 x 18% = ₹1,80,000.

b) If the service recipient [Musicera Pvt. Ltd.] would be an URP and event is held in India, **POS 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 POS 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:- The **POS of accommodation services** provided in any immovable property for organizing any cultural function shall be the **location at which the immovable property is located.[Sec 12(3) of IGST Act]**

Discussion & Conclusion:

➲ The Pos 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 LOS (Gurugram, Haryana) and the POS (Gurugram, Haryana) are in the same State, **CGST and SGST will be leviable =** ₹4,00,000 x 9% = ₹36,000 each.

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 as service of right to admission to a musical performance is **exempt from GST, 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 4

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:-

➲ 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. [**section 12(14)** read with **rule 3(8)**]

➲ **Proportionate value** for each state is calculated based on viewership of such channel in such State as under:-

a) 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 lastweek 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 X 1/4 = ₹ 2,50,000
B+C	1,00,000		10,00,000 X 2/4 =₹ 5,00,000
D+E	50,000		10,00,000 X 1/4 =₹ 2,50,000

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 X 9/10 = ₹ 4,50,000
C	20		5,00,000 X 1/10 = ₹ 50,000
D	100	D:E = 100:25 = 4:1	2,50,000 X 4/5 = ₹ 2,00,000
E	25		2,50,000 X 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 5

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 whose address is available with the shipping company.

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)	**Legal provision:-** ➲ If services related to goods made physically available by the recipient, POS is the place of performance. **(Sec 13(3)(a) of the IGST Act)** ➲ If such service is provided remotely via electronic means, POS is the location of goods at the time of service. **(Proviso to Sec 13(3)(a))** ➲ In case services requiring the physical presence of an individual then POS is also the place of performance. **(Sec 13(3)(b))** **Discussion & Conclusion:-** a) The supply of installation service received by Mr. X requires the recipient to make the machinery physically available & thus, place of supply **u/s 13(3)(a)** is the place where service is actually performed i.e. **New Delhi.** b) The place of supply **under proviso to section 13(3)(a)** 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., **USA.** c) The place of supply u/s 13(3)(b) for the service provided by Ms. Subha is **Maharashtra (Mumbai)** where service is performed.
2)	**Legal Provision:-**As per **section 13(5)** of IGST Act, for services provided by way of **admission to or organization** of an artistic, sporting or any other similar event & services ancillary thereto, the POS shall be the place where the **event is actually held.** **Discussion & Conclusion:-** ➲ In given case, the POS is **America** i.e. the place where the event is actually held. ➲ Here, the location of Service Provider is Germany, location of recipient is in India but the POS is outside India & hence, it is not an import of service. ➲ Thus, **No GST will be triggered** as it is neither an intra-state supply nor an inter-state supply.
3)	**Legal Provision:-** ➲ The POS of services directly related to immovable property (e.g., by architects) shall be the location of the property or where it is intended to be located. **(Sec 13(4) of the IGST Act)** ➲ If such services are provided at more than one location, including a location in the taxable territory, the place of supply shall be the location in the taxable territory. **(Sec13(6))** ➲ If such services are provided in more than one State, the place of supply shall be each of the respective States, in proportion to the value of services provided in each. **(Sec13(7)).** **Discussion & Conclusion:-** ➲ In first case, the POS shall be the location of immovable properties i.e. **Pune.** ➲ Since in second case, immovable properties are located in more than one location including a location in taxable territory, the POS of architect service is the location in the taxable territory, i.e. **Pune.** ➲ In third case, the POS shall be **Pune & Chennai** as per sec 13(4) read with sec 13(7) & the **value** of supply of service in each of the states will be ascertained by **dividing the value of the service equally** between these two States.
4)	**Legal Provision:-** As per **section 13(8)** of IGST Act, if either supplier or recipient is located outside India, the **POS shall be Location of Supplier** for the:- a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders, b) Intermediary services & c) Service consisting of hiring of means of transport, including yachts but excluding aircrafts and vessel, upto a period of one month. **Discussion & Conclusion:-** a) In given case, a means of transport is hired **for 20 days** i.e. upto period of 1 month & hence, the POS is the location of supplier of services i.e., **London.** b) **Yes. RCM liability needs to be discharged on such services.**

	In given case, banking company provides services to non-account holder, the POS is the **location of the recipient u/s 13(2)** of IGST Act i.e. **Mr. D, i.e., India** because it does not have an account with the foreign bank. Since supplier is outside India and recipient and POS are in India, said service qualifies as **import of services** thus, considered as **inter-State supply** as per **sec** 7 of IGST Act.
5)	**Legal Provision:-** ➲ If the location of supplier or location of recipient of services is outside India, the place of supply of services, except those specified in sec 13(3) to 13(13), shall be the **location of recipient of services.** If location of recipient is not available in the ordinary course of business, POS shall be the **location of supplier.** [sec 13(2)] ➲ As per **CBIC Clarification**, the place of supply of service of transportation of goods, **including** by way of mail or courier, shall be **determined as per sec 13(2) of IGST Act.** **Discussion & Conclusion:-** In given case, the POS of transportation of shipment is the location of event management company i.e., **Paris.**
6)	**Legal Provision:-** The place of supply of passenger transportation service shall be the place where passenger embarks on the conveyance for a continuous journey. **[Sec 13(10)]** **Discussion & Conclusion:-** In given case, the place of supply of service is **New Delhi** which is place where Mr. A embarks on the aircraft for a continuous journey.
7)	**Legal Provision:-**The POS for services provided on board a conveyance during passenger transport (including those consumed on board) shall be the first scheduled point of departure of the conveyance for the journey. **[sec 13(11)]** **Discussion & Conclusion:-** In given case, the place of supply of service supplied on board an aircraft is **Bangkok** which is the first scheduled point of departure of the aircraft for the journey.
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 **POS** of such services will be determined as per **sec 12(2) or Sec 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.

Question 6

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) ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it. The company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of

service?

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

Answer :-

1)	**Legal Provision:-** ➲ As per default rule when either the supplier or recipient is located outside India, the POS of services (excluding those u/s 13(3) to 13(13)) is the location of the recipient. **(Sec 13(2) of the IGST Act)** ➲ A service qualifies as export of services if: a) Supplier is in India, b) Recipient is outside India, c) Place of supply is outside India, d) Payment is received in convertible foreign exchange or INR (as permitted by RBI), & e) Supplier and recipient are not merely establishments of a distinct person. **Discussion & Conclusion:-** ➲ The given case does not fall under any of the specific situation u/s 13(3) to 13(13) and thus, the POS of services u/s 13(2) is the location of recipient of services, i.e. **USA.** ➲ Since all five conditions for export of service are fulfilled in given case, it **will be considered as an export of service** which is treated as inter-state supply & thus, liable to IGST.
2)	**Legal Provision:-** ➲ As per default rule when either the supplier or recipient is outside India, the POS (except for services under Sec 13(3) to 13(13)) is the location of the recipient. **(Sec 13(2) of the IGST Act)** ➲ import of services means: a) Supplier is located outside India, b) Recipient is located in India, and c) Place of supply is in India. ➲ As per the Reverse Charge Notification, if a service is received in taxable territory from a person in non-taxable territory (excluding NTOR), the recipient is liable to pay tax under reverse charge. **Discussion & Conclusion:-** ➲ Here, the supplier of service is located outside India & recipient of service is located in India. ➲ Since the given service is not covered under any of the specific provisions of section 13, the place of supply of service will be **Rajasthan (India)** which is the location of the recipient of service u/s 13(2). ➲ **Hence, it is an import of services** for a consideration from an unrelated person and the same **tant amounts to supply as per section 7(1)(b)** of CGST Act and are liable to GST. ➲ XY Ltd. will pay GST under **reverse charge** on £ 8000 paid by it to the attorney in UK.
3)	**Legal Provision:-** ➲ An intermediary is a broker, agent, or any person who arranges or facilitates the supply of goods, services, or securities between two or more persons. It does not include someone who makes such supplies on their own account. ➲ when either the supplier or recipient is outside India, the place of supply for intermediary services is the location of the supplier. (Sec 13(8)(b) of the IGST Act) ➲ A service qualifies as export of services if: a) Supplier is in India, b) Recipient is outside India,

	c) Place of supply is outside India, d) Payment is received in convertible foreign exchange or INR (as permitted by RBI), & e) Supplier and recipient are not merely establishments of a distinct person. **Discussion & Conclusion:** ➲ 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 POS of intermediary services is the location of supplier (ABC Pvt. Ltd.) which is New Delhi. ➲ Since, POS is in India, this transaction does not tantamount to export of service.
4)	**Legal Provision:-** ➲ The place of supply of the intermediary services shall be the location of the supplier of services.**[Sec 13(8)]** ➲ 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 both, or securities, between two or more persons. It does not include a person who supplies such goods &/or services or securities on his own account. ➲ **CBIC Clarification on Intermediary Services :** ➤There must be three parties—two principals involved in the main supply and a third (the intermediary) providing an ancillary supply by facilitating or arranging it. ➤ The intermediary must act as a broker, agent, or similar person, only arranging or facilitating the main supply, not supplying it themselves. ➤ A person who supplies the main goods or services on their own account is not an intermediary. ➤ A sub-contractor who performs the main supply (fully or partly) is not an intermediary, as they are not arranging or facilitating between two parties. **Discussion & Conclusion:** ➲ In given case, Alpha & Beta are two principals involved in main supply of machinery, whereas Gamma is providing ancillary supply of facilitating main supply of machine between Alpha & Beta. ➲ Therefore, Gamma is an intermediary and is providing intermediary service to Alpha. ➲ Thus, as per section 13(8)(b) of IGST Act, 2017, the place of supply of intermediary services provided by Gamma shall be the location of the supplier of services, **i.e. outside India (USA).**

Section 14 of IGST Act:- Provisions relating to OIDAR Services & Section 13(12):- POS of OIDAR Service

Question 7

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@ 18%**

Answer:-

1)	**Legal Provision:-** ➲ Services received by an individual from a foreign service provider (located in non taxable territory)for personal use (non-business purpose) are exempt from IGST. ➲ However, this exemption does not apply to OIDAR services received by a **Non- Taxable Online Recipient (NTOR)** from a supplier located outside India; such services are taxable under IGST. ➲ If a service is supplied by a person in a non-taxable territory to any person other than NTOR, IGST 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:-** ➲ The POS of Online Information and Database Access or Retrieval (OIDAR) services shall be location of recipient of service. **(sec 13(12) of IGST Act)** ➲ As per sec 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 in other than notified cases. **Discussion & Conclusion:-** ➲ In given case, the service downloading of digital content from various websites (completely automated) is an OIDAR service & the POS of this service is Singapore i.e. **the location of recipient of services.** ➲ Since the LOS is Mumbai i.e. in India, POS is outside India & the LOR is outside India, the supply is an export of service. ➲ Exports of service is treated as inter-state supply & thus, it is IGST is leviable to **₹72,000 i.e. (₹4,00,000* 18%).** **Assumption:** It is assumed that consideration is received in convertible foreign exchange and exports are undertaken without letter of undertaking as they do not fall under the notified cases .

09 Registration

Question 1

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(₹)	Uttrakhand (₹)	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 Prades 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? What is the maximum extension allowable to file such application?

Answer:-

Legal Provision:-

1) Aggregate T/o means aggregate value of all taxable supplies , exempt supplies (wholly exempt, nil rated & non-taxable) export Supplies & inter-state supplies under Same PAN to be computed on all India basis but excludes
   - CGST , SGST ,UTGST , IGST & GST Cess
   - value of inward supplies on which tax is payable under RCM . **[Sec 2(6)]**
2) Every person required to get registered a place where he makes taxable supplies & his aggregate T/o exceeds threshold limit of 20 lakhs . **[Sec 22]**
3) But in case of Tripura, Manipur, Nagaland & Mizorame the applicable threshold 10 lakhs.
4) Extend threshold of 40 lakhs is available , if person exclusively engage in supply of goods & not located in notified state & not supplying notified good i.e. Pan Masala,

Discussion:-

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

Particulars	**Himachal Pradesh(₹)**	**Uttrakhand (₹)**	**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**	**-**	**-**
Aggregate Turnover	**22,50,000**	**21,00,000**	**13,40,000**

➲ 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)

➲ Mahadev Enterprises **is liable to be registered** under GST law with the aggregate turnover of ₹56,90,000 (computed on all India basis) in **Himachal Pradesh & Tripura** since the applicable threshold limit of registration in this case is **₹10 lakh.**

➲Further, he is **not liable to be registered in Uttarakhand** since he is not making any taxable supply from Uttarakhand.

2)

a)

➲ If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be **₹40 lakh.**

➲ Thus, it will not be **liable for registration** as its aggregate turnover would be **₹22,50,000**.

b)

➲ If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh, then **higher threshold limit of ₹ 40 lakh will not be applicable** as the same applies only in case of exclusive supply of goods.

➲ Therefore, the applicable **threshold limit will be ₹ 20 lakh** and hence, Mahadev Enterprises **will be liable** to registration.

c)

➲ In case of inter-State supplies of taxable goods other than notified handicraft goods or notified hand-made products, **section 24 requires compulsory registration** irrespective of the quantum of aggregate turnover.

➲ Thus, Mahadev Enterprises **will be liable** to registration.

d)

➲ 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.**

➲ In view of the same, the applicable threshold limit for Mahadev Enterprises is ₹ 20 lakh.

➲ Thus, it is **liable to be registered** under GST as its aggregate turnover exceeds the said threshold limit.

3)

Legal Provision:-

➲ Any person making inter-State taxable supply of goods (except handicraft goods) is compulsorily required to register, regardless of turnover. **(Sec 24)**

➲ aggregate turnover includes all supplies made:

➤On the person's own account, or

➤On behalf of principals. **(Explanation to Sec 22)**

➲ If an agent issues invoices in his own name, he need to take compulsory registration **u/s 24,** Otherwise, he is liable to **register u/s 22** only if his Agg. T/o exceeds the threshold limit

Discussion & Conclusion:-

➲ In the first case, Mahadev enterprises is making **inter-state taxable supply of goods.** Thus, it is **required to obtain registration compulsorily** under GST laws even though its aggregate turnover does not exceed the threshold limit applicable u/s 22.

➲ 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.

Assumption:- It is assumed that agent is issuing **invoice** for further supply in **his own name.**

4)

➲ A supplier is liable to obtain registration in a State/Union Territory from where he makes taxable supply of goods and/or services.

➲ Shares are excluded from the definition of goods as well as services & hence, **buying and selling of shares is not a supply** of goods and/or services under GST law.

➲Thus, Mahadev enterprises is **not liable to obtain registration** since it is not engaged in making a taxable supply of goods and/or services.

5)

Legal Provision:-

1) Where a person supplying house keeping services through ECO & not liable for registration then ECO is **liable to pay tax. [Sec 9(5)]**

2) But, if supplier is **liable to register u/s 22** & supplying house keeping services through ECO, then he need to take compulsory registration **[Sec 24]**

Conclusion:- In given case, mahadev Enterprises will be entitled for threshold exemption for registration (as T/o is less than 20 lakhs) & will not be required to obtain registration even though if supplies services through ECO

6)

Legal Provision:-

- As per **section 22** read with **section 25** 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 **within 30 days** from the date of becoming liable to registration.
- Where the **application is submitted within** the said period, the effective date of registration is the date on which the person **becomes liable to registration**

  -**otherwise** it is the **date of grant of registration.**

Discussion & Conclusion:-

- In given case, applicable turnover limit for registration is ₹ 20 lakh as Uttarakhand is not a Special Category State.

(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)	➲ **No,** the **advice** of Mahadev Enterprise's consultant that prior submission of bank details is mandatory to obtain registration is **no more valid in law.** ➲ As per **rule 10A**, bank account details shall be furnished by a registered person after obtaining certificate of registration & a GSTIN but it shall be furnished by the earlier of the following:- ➢ **within 30 days from the date of grant of registration, or** ➢ **before furnishing the details of outward supplies of goods &/or services u/s 37 in FORM GSTR-1 or using IFF.**

7)

Yes, separate registration can be granted for two units under same PAN located in same state.

Legal Provision:-A person having multiple places of business in a State/UT may obtain separate registration for each place, subject to:

- The person has more than one place of business .
- If any place of business is registered under the regular scheme , then none of the places can opt for composition scheme **(Sec 10).**
- GST must be paid on supplies between these separately registered units, and tax invoice must be issued.
- Application for separate registration must be filed in REG-01 for each place. **(Sec 25(2))**

Discussion & Conclusion:- In given case, if Mahadev Enterprises, satisfies all the above conditions, separate registration **can be granted** to it even though the two units are located in same state.

8)

The procedure for amendment of registration is as under **[Sec 28]**

1) **For any changes** 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, **within 15 days** of such change along with related documents.

2) If change relates to **core fields of information,** proper officer may approve or reject amendments in registration particulars & amendment shall take effect from the date of occurrence of event warranting such amendment.

3) If change relates to **non-core fields,** registration certificate shall stand amended upon submission of application for amendment on Common Portal.

(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 **change in PAN would warrant a new registration**.

9)

➲ **Yes, the proper officer can cancel the registration of Mahadev enterprises on his own after opportunity of being heard to it.**

➲ As per **section 29(2)** of CGST Act, 2017 **read with rule 21** of CGST Rules, 2017, the circumstances under which **proper officer can cancel the registration on his own** of a registered person after giving the person an **opportunity of being heard** [Sec 29(2)] are as under:-

(1) A registered person has **contravened any of the following provisions** of the GST law:-

a) he does not conduct any business from the declared place of business.

b) he issues invoice/bill without supply of goods or services or both in violation of the provisions of GST law.

c) he violates the provisions of anti-profiteering.

d) he violates the provisions relating to furnishing of bank details.

e) He avails input tax credit in violation of the provisions of sec 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 u/s 39 for the said tax periods.

g) violates the provision of rule 86B.

ga) violates the provisions of 3rd or 4th proviso to rule 23(1)

- ➲ failed to file returns due between the order of cancellation and revocation of registration within 30 days of the revocation order.
- ➲ If the cancellation was retrospective, failed to file all returns from the date of order of cancellation date to the revocation order within 30 days.

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 RP 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 sec 29(1) of CGST Act 2017,** following are the circumstances where PO 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:-

➲ 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 90 days** from the date of service of the order of cancellation of registration**. [Sec 30 read with rule 23]**

➲ On sufficient cause being shown & for reasons to be recorded in writing, the above time limit may be extended by Commissioner or officer authorised by him, not below the rank of Additional Commissioner or Joint Commissioner **for a further period** not exceeding **180 days.**

➲ 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 2

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)	➲ As per **section 2(20)** of CGST Act, 2017, **Casual taxable person means** a person- ➢ who **occasionally undertakes transactions** involving supply of goods and/or services, ➢ in the course or furtherance of business, ➢ whether as principal, agent or in any other capacity, ➢ in a State/UT where he has no fixed place of business. ➲ As per **section 2(77)** of CGST Act, 2017, Non-resident taxable person means a person- ➢ who **occasionally undertakes transactions** involving supply of goods and/or services, ➢ whether as principal, agent or in any other capacity, ➢ but who **has no fixed place** of business or residence **in India.**
b)	**No,** as per **sec 10(2) and 10(2A)** of CGST Act, 2017, a casual taxable person cannot opt for the composition scheme
c)	➲ As per **section 24** of CGST Act, 2017, a casual taxable person (CTP) is liable to obtain registration compulsorily under GST law. ➲ CTP has to apply for registration **at least 5 days prior to commencement of business as per section 25(1) read with proviso thereto.** ➲ However, if CTP is making taxable supplies of specified handicraft goods, then it is eligible for the threshold limit applicable as per **section 22.** ➲ Whereas non-resident taxable person, should apply for registration **at least 5 days prior to the commencement of business** irrespective of the threshold limit.
d)	➲ **Yes, PAN is being mandatory** for registration of casual taxable person. ➲ **However, PAN is not mandatory** for registration of non-resident taxable person. ➢ He has to submit a self-attested copy of his **valid passport** along with the application signed by his authorized signatory who is an Indian Resident having valid PAN. ➢ However, in case of a business entity incorporated or established outside India, the application for registration shall be submitted **along with its tax identification number or unique number** on the basis of which the entity is identified by the Government of that country or its PAN, if available.
e)	➲ As per **section 27(1) of CGST Act read with proviso thereto,** Registration Certificate granted to a casual taxable person & non-resident taxable person will be valid for earlier of:- ➢ **period specified in the application** for registration or ➢ period of **90 days** from the effective date of registration. ➲ However, at the request of the said taxable person, the proper officer may **extend the validity by a further period not exceeding 90 days.**
f)	➲ **Yes,** the **validity** of registration certificate issued to a casual taxable person and non-resident taxable person **can be extended.** ➲ It can be extended by a **further period not exceeding 90 days** by making application before the end of period of validity of registration granted to him.

10 TAX INVOICE

Question 1

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 of Microwaves for exhibition at Mumbai on Sale on return basis on 20th May 20XX. 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)(c)**, 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)	**Yes, Mr Jai shall raise an invoice as under:-** **Legal Provision:-** ➲ As per **section 31(6)** of CGST Act, 2017, If supply of services ceases under a contract before the completion of supply:- ➢ invoice shall be issued at the time when the supply ceases & ➢ such invoice shall be issued to the extent of supply made before such cessation. **Discussion & Conclusion:-** ➲ In the given case, the contract to provide manpower was for 28 days but the service is stopped after 10 days only & thus, the **invoice shall be issued on the 10th day.** ➲ Further, the Value of such invoice shall be **proportionate** to supply made in 10 days i.e. **₹10,000**
6)	**Legal Provision:-** ➲ As per **section 31(2)** 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 **before or after the provision of service, but within a period of 30 days** from the date of supply of service. **Discussion & Conclusion:-** ➲ 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 **before, 5th July, 20XX.**
7)	**Legal Provision:-** ➲ As per **section 31(3)(c)** 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. **Discussion & Conclusion:-** ➲ In the given case, Mr. Jai is paying tax under composition scheme. Therefore, he cannot issue tax invoice. Instead, he shall **issue a Bill of Supply.** ➲ **In the second case, Yes,** 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** subject to the **condition that:** ➢ the recipient is not a registered person; and ➢ the recipient does not require such bill of supply, **and he shall issue a consolidated bill of supply** for such supplies at the close of each day in respect of all such supplies.
8)	**Legal Provision:-** ➲ As per **section 31(3)(d)** of CGST Act, 2017, **on receipt of advance payment** 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 & containing prescribed particulars. ➲ As per **section 31(3)(e)** of CGST Act, 2017, if a registered person issues a Receipt Voucher for advance payment received for supply of goods &/or services, but subsequently:- ➢ **No supply** is made & ➢ **No tax invoice** is issued for the same, then he may issue a **Refund Voucher against such advance payment** to the person who had made the payment. **Discussion & Conclusion:-** ➲ Mr. Jai is required to **issue a receipt voucher at the time of receipt of advance** payment with respect to

	services to be supplied to his client. ➲ In the given case, subsequently no services are supplied by Mr. Jai, and no tax invoice is issued in pursuance thereof, Mr. Jai **may issue a refund voucher** against such payment to his client.
9)	**Legal Provision:** ➲ The **Recipient is liable to pay tax** on reverse charge basis if he receives supply of such goods &/or services which are notified under **section 9(3) & 9(4)** of CGST Act, 2017 ➲ As per **section 31(3)(f)**, when a registered person **receives supply** of goods &/or services which are liable to pay tax on reverse charge basis **from an unregistered person (including those registered only for TDS u/s 51),** then Invoice is to be issued by recipient on the date of receipt of goods &/or services. ➲ As per **section 31(3)(g),** a registered person who is liable to pay tax under section 9(3)/9(4) of CGST Act shall issue a payment voucher **at the time of making payment** to the supplier. ➲ Further, As per Rule 47A, A registered person liable to pay tax under reverse charge must issue a **self-invoice within 30 days** of receiving the goods or services. **Discussion & conclusion:** ➲ 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 ➲ Mr. Jai has availed services of GTA (unregistered person) on which he is liable to pay tax under reverse charge u/s 9(3). ➲ He is **required to issue an invoice for GTA services availed by him within 30 days from the date of receipt of service & issue a payment voucher** at time of making payment to GTA.
10)	➲ 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. ➲ Thus, there is **no need to issue a tax invoice and a bill of supply separately** to the school student for supply of taxable and exempted goods respectively.
11)	➲ As per **section 33** of CGST Act, if a **supply is made for a consideration,** then every person who is liable to **pay tax** 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 & other like documents. ➲ As per **rule 46** 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).

Question 2

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 **reporting of business to business (B2B) invoices** to GST system for certain notified category of taxpayers
2)	➲ **Mandatory e-invoicing** is applicable to all registered businesses whose aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards **exceeds ₹ 5 Crore** will be required to issue e-invoices for **B2B supplies or for exports.** ➲ **Exception:-** Following persons are exempted from the mandatory requirement of e-invoicing:- ➢ A Government Department ➢ A local Authority ➢ Special Economic Zone (SEZ) units ➢ Insurer or banking company or financial institution including NBFC ➢ GTA supplying services in relation to transportation of goods by road in a goods carriage ➢ Supplier of passenger transportation service ➢ Person supplying services of admission to exhibition of cinematograph films in multiplex screens ➲ **Declaration to be given in tax invoice:-** A taxpayer whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 5 Crore but is exempted from e-invoicing shall give a declaration in the tax invoice that ➢ invoice is not required to be issued in the manner specified under rule 48(4).
3)	**The advantages of E-invoicing are as follows:-** 1. **Auto-reporting of invoices into GST return & auto-generation of e-way bill (wherever required):-** Once B2B invoice data is reported in e-invoice form, the same is reported in multiple forms (GSTR-1, e-way bill etc.). 2. **Substantial reduction in transcription errors & Reconciliation:-** Same data gets reported to tax department & to buyer to prepare his inward supplies register. Buyer can reconcile with his Purchase Order. 3. **Matching of ITC & output tax by Dept. & reduces tax evasion:-** A complete trail of B2B invoices is available with Department which enables the system-level matching of ITC & output tax thereby reducing the tax evasion. 4. **Eliminates fake invoices:-** Claiming fictitious ITC by raising fake invoices is eliminated. E-invoice system helps to curb actions of unscrupulous taxpayers & reduces fraud cases as tax authorities have access to data in real-time. 5. **Other Advantages:-** ➢ Facilitate standardisation & inter-operability, ➢ Reduction of disputes among transacting parties, ➢ Better relationship, ➢ Eco-friendly as it eliminates paper, ➢ Improve payment cycles, ➢ Internal controls, ➢ Reduction of processing costs & ➢ Improving overall business efficiency greatly.
4)	**Legal Provision:** ➲ All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards **greater than ₹ 5 crore** are required to issue e- invoices in respect of B2B supplies (supply of goods and/or services to a registered person). ➲ 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.

Discussion & conclusion:

1)	➲ 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 ➲ The aggregate turnover of Fashion Queen Ltd. exceeds the threshold limit of aggregate turnover applicable for e-invoicing & thus, it is mandatorily required to issue e-invoices in respect of supplies made to registered persons.
2)	➲ **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 ₹ 5 crore in the preceding financial year & thus, e- invoicing is not applicable to Superfast Transports ➲ **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
3)	➲ **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. ➲ Since the aggregate turnover of GTA also **exceeds ₹ 5 Crore** in previous year 20XX-XY and it makes supplies to registered person only, the **GTA is required to prepare E-invoice.**

5) ➲ All invoices **issued to an unregistered person** (B2C invoice) **by a registered person** whose **aggregate turnover** in any preceding financial year from 2017-18 onwards **exceeds ₹ 500 crores** are required to have a Dynamic QR code.

➲ However, Dynamic Quick Response (QR) code is **not applicable** to following suppliers when they issue an invoice to an unregistered person:-

1. Insurer or banking company or financial institution including NBFC.
2. GTA (Goods transport agency) supplying services in relation to transportation of goods by road in a goods carriage.
3. Supplier of passenger transportation service.
4. Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens.
5. Supplier of OIDAR (online information and database access or retrieval) services.
6. In case of exports.

Question 3

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?

7) ABC Ltd., a registered supplier, sells goods to XYZ Ltd., a registered recipient, for ₹10,00,000 plus GST @18% (₹1,80,000). After the supply, ABC Ltd. issues a credit note of ₹1,00,000 plus GST ₹ 18,000 due to price adjustment. XYZ Ltd. has availed ITC on the original supply but has not reversed ITC corresponding to the credit note.

In another case, ABC Ltd. issues a credit note of ₹ 50,000 plus GST ₹ 9,000 to an unregistered customer, who has already paid the full price including GST. Discuss the GST implications under the provision on credit notes and the effect on ABC Ltd.'s output tax liability.

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 choses to retain the same. ➲ However, The supplier cannot reduce their output tax liability if: (i) a registered recipient has not reversed the ITC related to the credit note or (ii) in other cases, the tax burden has been passed on to another 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:- a) The **taxable value declared** in the invoice **is less** than the actual value of the supply b) The **tax charged** in the invoice is **less** than the actual tax payable in respect of the supply c) The **quantity received** by the recipient **is more** than what has been declared in the tax invoice and the customer choses to retain the same
2)	As per **section 34** of CGST Act, 2017, on issue of a Credit Note under GST, there is a **reduction in output tax liability** (subject to doctrine of unjust enrichment) whereas, on issue of a Debit Note under GST, there is an **increase in the output tax liability** of the registered person issuing the same.
3)	➲ 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 **Till the earlier of:-** ➢ 30th November following the end of F.Y. in which such supply was made, or ➢ Date of furnishing of the relevant annual return. ➲ However, debit note issued by a registered person in relation to a supply of goods &/or services shall be declared **in the return for the month during which it is issued.**
4)	The below requirements must be met for claiming a reduction in output tax liability by issuing Credit Note under **section 34** of CGST Act, 2017:- a) If a recipient is registered and he has reversed the ITC related to the credit note. b) In all other cases, **burden of tax** have not been passed on to any person. b) The details of the credit note are **declared within the prescribed timelines.** c) The recipient of the supply should **accept credit note in his return of inward supply** and reduce his claim of input tax credit to the extent of reduction in tax liability.
5)	**Yes,** Debit Note can be issued only for increasing tax liability by the supplier. ➲ Debit note' are akin to **'supplementary invoice'.** ➲ They are issued by the supplier for recording **increase in taxable value or tax charged** in the supply under **section 34** of CGST Act, 2017.
6)	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)	**Yes,** debit/credit note need to be issued in each of the circumstances as under:- a) A **credit note** is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value. b) A **debit note** is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable. c) A **debit note** is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value
	iii)	The details of the credit note **cannot be declared later than:-** ➢ 30th November following the end of the financial year in which such supply was made or ➢ the date of furnishing of the relevant annual return, **whichever is earlier.**
7)		➲ **For the Registered recipient (XYZ Ltd.):** If the recipient has availed ITC corresponding to the credit note but has not reversed it, the supplier cannot reduce output tax liability. In this case, XYZ Ltd. has not reversed ITC of ₹ 18,000, so **ABC Ltd. cannot reduce its output GST** for the credit note issued to XYZ Ltd. ➲ **For the Unregistered recipient:** In this case, if the tax incidence has already been passed on to another person, the supplier cannot reduce output tax liability. Since the unregistered customer has already paid ₹ 50,000 plus GST ₹ 9,000, **ABC Ltd. cannot adjust GST** on this credit note either.

11 ACCOUNTS & RECORDS

Question 1

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)

- GoToDress, a registered person, shall keep & maintain a **true and correct account** of following at his **principal place of business** as mentioned in certificate of registration **under section 35(1)** of CGST Act, 2017:-
  - production or manufacture of goods,
  - inward and outward supply of goods or services or both,
  - stock of goods,
  - input tax credit availed,
  - output tax payable & paid,
  - other prescribed particulars.
- The accounts & other particulars may be maintained in **electronic form** stored on any electronic device & shall be authenticated with a **digital signature under rule 56.**
- If **more than one** place of business is specified in the certificate of registration, the accounts relating to each place of business **should be kept at such places** of business.

2)

As per **rule 56(2) & (4)** of CGST Rules, following records are **not required** to be maintained by supplier who has opted for composition scheme but are required to be maintained by a normal tax payer:-

i) Stock of goods:-

- Accounts of stock in respect of goods received and supplied by him.
- Such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw

	materials, finished goods, scrap and wastage thereof. **ii) Details of tax:-** ➲ Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
3)	As per **rule 56(11) of CGST Rules**, every agent shall maintain accounts depicting the following:- a) Particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately, b) Particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal, c) Particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal, d) Details of accounts furnished to every principal and e) Tax paid on receipts or on supply of goods or services effected on behalf of every principal.
4)	**Yes,** as per **rule 56(12)** of CGST Rules, apart from other records, every registered person **manufacturing goods** shall maintain **monthly production accounts** showing quantitative details of:- a) Raw materials or services used in the manufacture, and b) Goods manufactured including the waste and by products thereof.
5)	**Yes,** as per **rule 56(13)** of CGST Rules, every registered person **supplying services** shall additionally maintain the accounts showing quantitative details of:- a) Goods used in the provision of services, b) Details of input services utilised and c) Services supplied.
6)	**Yes,** as per **rule 56(14)** of CGST Rules, ABC Ltd., being a registered person executing works contract, shall keep separate accounts for works contract showing:- a) the names and addresses of the persons on whose behalf the works contract is executed, b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract, c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract, d) the details of payment received in respect of each works contract and e) the names and addresses of suppliers from whom he received goods or services.
7)	➲ **Yes.** As per **section 35(2)** of CGST Act read with **rule 58** of CGST Rules, unregistered transporters shall:- ➢ obtain a **unique enrolment number** on GST common portal and ➢ **maintain records** of goods transported, delivered and goods stored in transit by them along with GSTIN of the registered consignor and consignee for each of his branches. ➲ **Every owner/ operator of warehouse/ godown/ any other place** used for storage of goods is also required to maintain records under GST even if it is unregistered.
8)	➲ **No,** as per **rule 56(8)** of CGST Rules, any entry in the register, accounts and documents shall **not be erased,** effaced or overwritten. ➲ All incorrect entries (other than those of clerical nature) **shall be scored out** under attestation and then the correct entry shall be recorded. ➲ If registers & other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
9)	➲ As per **section 36** 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 **72 months from the due date** of furnishing of annual return for the year pertaining to such accounts and records. ➲ But if registered person is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or 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.**

11 E-WAY BILL

Question 1

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 ₹50,000:-** As per Rule 138(1), if **registered person causes movement** of goods of **consignment value exceeding ₹ 50,000:-**

- ➤ 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/ Union Territory, e-way bill shall be generated either by the principal or job worker (if registered), irrespective of the consignment value.

b) **Interstate transportation of handicraft goods:-** 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.

➲ **Voluntary generation of e-way bill:-** A registered person or the transporter may voluntarily generate an e-way bill even if consignment value is <= ₹ 50,000.

2)

Legal Provision:-

➲ As per **Rule 138(1)** of CGST Rules, if **registered person causes movement** of goods of **consignment value exceeding ₹ 50,000:-**

- ➤ 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.

➲ As per **CBIC Clarification**, 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.

➲ As per **explanation 2 to rule 138(1)**, the consignment value of goods shall be:-

- ➤ value as per section 15 as declared in an invoice, bill of supply or delivery challan,
- ➤ **including** CGST, SGST, UTGST, IGST and cess charged, if any, in the document but
- ➤ it **excludes** the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Discussion & Conclusion:-

a) Accordingly, in the first case, the consignment value will be as follows:-
₹ 48,000 × 118% = **₹ 56,640.**
Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, **e-way bill is mandatorily required to be issued** in the given case.

b) 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 **is required** to be **mandatorily** generated.

c) In the third case, the consignment value is **₹ 47,200** (i.e., ₹ 40,000 + ₹ 7200). Here, ₹ 25,000 will not be included as it is an exempt supply.
Thus, e-way bill is **not required to be issued** as consignment value is not exceeding ₹ 50,000.

3)

➲ **An e-way bill contains 2 parts namely:-**

- ➤ **Part A** to be furnished by registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and
- ➤ **Part B** (transport details) is to be furnished by person who is transporting the goods.

➲ **Goods transported by registered person by Road:-**

E-way bill shall be generated by furnishing information in Part B- by the **registered person as a consignor or the recipient as the consignee,** whosoever transports goods by road:-

- ➤ whether in his own conveyance or
- ➤ a hired one or
- ➤ a public conveyance.

➲ **Goods transported by Railways or Air or Vessel:-**

E-way bill shall be generated by the **registered person**, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on common portal, the information in Part B.

➲ **Goods not transported by registered person but handed over to transporter:-**

If e-way bill is not generated by registered person & goods are handed over to transporter for transportation of goods by road,

	➤ the **registered person** shall furnish information relating to the transporter in Part B on the common portal and transporter shall generate e-way bill on the basis of information furnished by registered person in Part A. ➲ **If E-way Bill is not generated i.e. consignment value not exceeding ₹ 50,000:-** In case of transport of goods by road, if consignor/consignee has not generated e-way bill & the aggregate of consignment value of goods carried in the conveyance is > ₹ 50,000, then **prior** to the movement of goods:- ➤ Transporter **shall generate e-way bill** on basis of invoice or bill of supply or delivery challan only in respect of inter-State supply & ➤ He **may also generate a consolidated** e-way bill.
4)	**Legal Provision:-** ➲ As per **rule 138** 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] **exceeds ₹ 50,000.** ➲ As per CBIC Clarification, if multiple invoices are issued by the supplier to one recipient, **multiple e-way bills have to be generated-one e-way bill for each invoice,** irrespective of the fact whether the same or different consignors or consignees are involved. ➲ Each invoice is considered as **separate consignment** for the purpose of generating e-way bills. **Discussion & Conclusion:-** ➲ In given case, Sindhi Toys Manufacturers would be required to prepare **two separate** e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills. ➲ Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, **one consolidated e-way bill can be prepared** for transportation purpose, if goods are going in one vehicle.
5)	**Legal Provision:-** ➲ **Before such transfer and further movement of goods,** the following persons shall update the details of conveyance in Part-B of E-way Bill:- ➤ the consignor or the recipient, who has provided information in Part A, or ➤ the transporter. ➲ Further, the consignor or the recipient, who has furnished the information in Part A, or the transporter, **may assign** the e-way bill number to another registered or enrolled transporter for updating the information in Part B for further movement of the consignment. ➲ 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. **Discussion & Conclusion:-** ➲ In given case, only one e-way bill is required to be issued. ➲ 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. ➲ 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, **update the details of conveyance in Part B of e-way bill.** ➲ Further, on reaching Mumbai, Sindhi Toys Manufacturers or recipient of goods, or first transporter **can assign the said e-way bill** to second transporter who will thereafter update details of conveyance in Part B. ➲ 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.

6)	➲ As per **Rule 138(12)** 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 **Earlier** of:- ➤ **72 hours** of details being made available to him on common portal or ➤ **Time of delivery** of goods. ➲ If such supplier/ recipient does not communicate his acceptance or rejection within this time, then it shall be deemed to be accepted.
7)	➲ **No,** As per **Rule 138(14)** of CGST Rules, e-way bill is **not required to be generated,** if goods are being transported by a non-motorised conveyance.
8)	a) E-way bill **will be generated before commencement of movement** of goods by transporter on Monday. b) As per **Rule 138(10)** 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. Thus, the validity period in the given case, is **4 days.** It is **assumed** that goods transported are not over dimensional cargo. 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 **expiring at midnight of the day immediately following** the date of generation of e-way bill. Thus, in given case, the e-way bill will be valid till **mid-night of Friday.**
9)	➲ It is mandatory to generate e-way bill in all cases where the consignment value of goods being transported **exceeds ₹ 50,000/-** and it is not otherwise exempted under rule 138(14). ➲ If e-way bills required are not issued as per rule 138, the same will be considered as **contravention** of rules. ➲ As per **section 122(1)** of CGST Act, a taxable person who transports any taxable goods without e-way bill shall be liable to a **penalty of ₹ 10,000/- or tax evaded, whichever is higher.** ➲ Moreover, as per **section 129(1)**, if any person transports any goods or stores any goods while they are in transit in contravention of GST Act or Rules made thereunder, **all such goods and conveyance** used as a means of transport for carrying the said goods **and documents** relating to such goods and conveyance **shall be liable to detention or seizure.**
10)	➲ **No**, the e-way bill once generated **cannot** be edited or corrected. ➲ Only option is **cancellation** of e-way bill within 24 hours of generation and **generate a new one** with correct details. ➲ But e-way bill cannot be cancelled if it has been verified in transit as per Rule 138B.

12 PAYMENT OF TAX

Question 1

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:-

a) 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.

b) Are principles of unjust enrichment applicable for payment made under GST

c) Compute the net tax payable in cash while filing the said return as well as the interest payable for the delayed

Answer:-

a.	**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:** 1) self-assessed tax, and other dues related to returns of previous tax periods. 2) self-assessed tax, and other dues related to the return of the current tax period. 3) any other amount payable under this Act or the rules made thereunder including the demand determined u/s 73 or 74 **or 74A** **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.**
b.	**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] 1) IGST: 26,52,000 2) CGST: 18,32,000 3) SGST: 18,32,000	(14,75,000) - -	(5,88,500) (18,32,000) -	(5,88,500) - (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-

(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

Author Note:- ITC of Tax payable under reverse charge is assumed to be included in the balance of E-credit ledger given, because question has directly given balance of E-credit ledger

Question 2

ABC Ltd., a registered taxpayer under GST, is required to file its GSTR-3B return for the month of July 2024. The due date for filing the return is 20th August 2024, but ABC Ltd. files its return on 30th August 2024, 10 days after the due date.

On the due date (20th August 2024), ABC Ltd. had ₹50,000 credited into its Electronic Cash Ledger. The tax payable for the month of July was ₹40,000. Due to a delay in filing, ABC Ltd. filed the return on 30th August 2024 and made the payment of ₹40,000 from the Electronic Cash Ledger on that date.

Does ABC Ltd. need to pay any interest on the delayed payment of tax since the return was filed after the due date?

Answer:

Legal Provision: If any amount has been credited into the E- Cash Ledger on or before the due date for filing the return, and the amount remains in the ledger until it is debited for payment of tax after the due date, such amount shall not be considered while calculating interest. **(Proviso to Rule 88B)**

Discussion & Conclusion:

- In the case of ABC Ltd., the amount of ₹50,000 was available in the E-Cash Ledger on the due date (20th August 2024). Although the return was filed late, on 30th August 2024, the tax payable of ₹40,000 was paid from the available balance in the Cash Ledger.
- Since the amount was available in the ledger on the due date and remained there until it was debited for payment on 30th August. Thus, ABC Ltd. will **not be liable to pay any interest** on the delayed filing of the return.

Question 3

Mr. Broker wrongly availed ₹ 1,25,000 as input tax credit (CGST + SGST) at the time of furnishing return under section 39 of the CGST Act, 2017 for the month of October 20XX. This ITC was not utilized against the output tax liability for the month of October 20XX. Mr. Broker utilised ITC of ₹ 75,000 from the above wrongly availed ITC of ₹1,25,000 against output tax liability for the month of November 20XX.

Mr. Broker paid the amount of ITC wrongly utilised of ₹ 75,000 on 10th March, 20YY and reversed the unutilized amount of ₹ 50,000 on 20th March 20YY. Calculate the total interest payable (CGST + SGST) rounded off to nearest rupee under GST law if Mr. Broker files:

(i) Form GSTR-3B for the month of October on 18th November 20XX, and

(ii) Form GSTR-3B for the month of November on 25th December 20XX.

Note: Assume there is no extension of due date of filing of Form GSTR-3B, and no other transactions were undertaken during the year 20XX-YY. [CA Final Nov 23 Exam]

Answer:-

Legal Provision:

➲ As per **Sec 50 read with Rule 88B,** if ITC has been wrongly availed and utilised, the registered person shall pay **interest** on the same

- ➢ for the period starting from the date of utilisation of such wrongly availed ITC
- ➢ till the date of reversal of ITC or payment of tax in respect of such amount
- ➢ @ 18% per annum.

➲ Where date of utilisation of ITC will be **Earlier** of Due date of furnishing returns or Actual date of filing return.

Discussion & Conclusion:

➲ In the given case, Since wrongly availed ITC of ₹ 50,000 has been reversed without utilizing the same, interest is not payable on the same.

➲ However, Interest is payable on wrongly availed and utilised ITC of ₹75,000.

➲ Date of utilisation of said ITC will be:

- ➢ Due date of furnishing return for Nov 20XX [20th December, 20XX] or
- ➢ Actual date of filing of the return for Nov 20XX [25th December 20XX] whichever is **earlier.**

Thus, date of utilisation of said ITC will be **20th December, 20XX.**

➲ Interest (CGST + SGST) will be payable for **80 days** [21st December 20XX to 10th March, 20YY (both days inclusive)] as follows:

= ₹75,000 × 80/365 × 18%

= **₹2,959** [CGST+SGST] (rounded off)

Authors Note:

ICAI has calculated interest from next day of Date of utilisation, but the provision says it should be from the date of utilisation, So Answer may vary in some cases & Student has to follow ICAI Approach.

Question 4

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:

S. No	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 **Sec 51** , the following persons are required to deduct TDS @(1% CGST + 1% SGST/UTGST) for intra-State supplies or 2% IGST for inter-State supplies, on taxable supplies where the contract value exceeds ₹2,50,000 (excluding GST):

TDS Deductors: a) A department or establishment of the CG or SG

b) Local authority c) Governmental agencies d) Government authority, board, or body

e) A society established by CG/SG/LA f) PSU g) Metal scrap supplied by RP to another RP

TDS is to be deducted at the time of payment or credit, whichever is earlier.

➲ **As per section 52,** every ECO **not being an agent**, shall collect tax at source @ **0.5% (CGST – 0.25% and SGST – 0.25 %),** 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:-

S. No.	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 SectorUndertaking 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.	➲ Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows: = ₹2,60,000 × 100 / 118 = ₹2,20,339 (rounded off) ➲ Since the total value of taxable supply under the contract **does not exceed ₹2,50,000**, tax is not required to be deducted at source.
2.	➲ Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows: = ₹2,95,000 × 100 / 118 = ₹2,50,000 ➲ Since the total value of taxable supply under the contract **does not exceed ₹2,50,000**, tax is not required to be deducted at source.

3.	➲ Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows: = ₹ 5,90,000 × 100 / 118 = ₹ 5,00,000 ➲ Since the total value of taxable supply under the contract **exceeds ₹ 2,50,000,** PSU in Uttarakhand is required to deduct tax at source @ 2% (for IGST) of ₹ 25,000, i.e. **₹ 500.**
4.	➲ Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows: = ₹ 6,49,000 × 100 / 118 = ₹ 5,50,000 ➲ Since the total value of taxable supply under the contract **exceeds ₹ 2,50,000** National Housing Bank, Delhi is required to deduct tax at source @ 1% CGST & 1% SGST each of ₹ 50,000, **i.e. ₹ 500 each**
5.	➲ **As per Proviso to section 51(1) of the CGST Act, 2017** stipulates that **no** tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient. ➲ **Further, as per Section 12(3) of the IGST Act, 2017**, the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi. ➲ Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient - Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.
6.	➲ If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract **exceeds ₹ 2,50,000.** ➲ Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows: = ₹ 2,72,000 × 100 / 118 = ₹ 2,30,509 (rounded off) ➲ Since the total value of taxable supply under the contract **does not exceed ₹ 2,50,000**, tax is not required to be deducted at source.
7.	➲ **An electronic commerce operator (ECO)** is required to collect Tax at source @ 0.5% (CGST 0.25% and SGST @ 0.25%) of the **net value of taxable supplies** made through it by other suppliers ➲ Therefore, the net value of taxable supplies, = ₹ 1,77,000 × 100 / 118 = ₹ 1,50,000 Thus, 0.25 % of ₹ 1,50,000 = ₹ 375 (CGST) & ₹ 375 (SGST)
8.	➲ Mr. A, an ECO is supplying goods through the **electronic common portal** in capacity of an agent on behalf of Manihar enterprises and hence the liability to collect tax at source as per Section 52 **shall not** arise in this case.
9.	➲ **As per Sec 12 of IGST Act,** 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. ➲ 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 @ 0.5% (CGST 0.25% and SGST @ 0.25%) of the **net value of taxable supplies** Therefore, the net value of taxable supplies, = ₹ 2,30,100 × 100 / 118 = ₹ 1,95,000 **Thus**, 0.25 % of ₹ 1,95,000 = **₹ 487.5 (CGST) & ₹ 487.5 (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 5

Bindusara commences the business of supplying taxable goods locally within the State of Rajasthan in April. He is not yet registered under GST. As his aggregate turnover reaches ₹ 8 lakh by the end of the month of June, Bindusara starts exploring the option to sell the goods supplied by him within Rajasthan on a popular electronic commerce platform – E-vastustore by listing the goods on the said platform.

He approaches you for advice on following issues in this regard:

A) Bindusara wishes to continue his business without registering under GST since it will enhance the compliance burden under GST law. Can he supply the goods through E-vastustore without obtaining GST registration? You are required to advise him.

B) Discuss the GST implications in case Bindusara supplies goods through electronic commerce platform – E-vastustore.

C) Can Bindusara opt for composition scheme u/s 10 in future, if he becomes liable to register on crossing the threshold limit for registration u/s 22? If yes, can he make inter-state supply of goods & continue to be under composition scheme?

D) If Bindusara obtains registration & opts for composition scheme, what are the compliances that are to be fulfilled by ECO- E-vastustore, if Bindusara supplies goods through it?

E) What is maximum time limit to furnish a statement for an ECO?

F) Assume that Bindusara crosses the threshold limit for registration u/s 22 & becomes liable for registration. He did not obtain registration & still supplies goods through ECO. State the penalty leviable, if any, on the ECO- E-vastustore u/s 122 of CGST Act.

Answer:-

A) **Yes, Bindusara can supply goods through E-vastustore without obtaining GST registration.**

Legal Provision:-

- ➲ As per Sec 24 persons supplying goods or services (except services u/s 9(5)) through an ECO required to collect TCS u/s 52 must mandatorily register, regardless of turnover.
- ➲ However, as per notification, exemption from registration till threshold is available to persons supplying goods through ECOs (liable to collect TCS), if:

Conditions for Exemption:

- ➲ Aggregate turnover in preceding and current FY does not exceed threshold under Section 22(1).
- ➲ No inter-State supply of goods.
- ➲ Supplies are made through ECO in only one State/UT.
- ➲ Person must have a valid PAN under Income-t
- ➲ Before supplying, person must declare PAN, business address, and State/UT on the GST portal — validated before enrolment.
- ➲ Must obtain a unique enrolment number per State/UT.

	➲No supply allowed through ECO without enrolment number. ➲ Once registered u/s 25, the enrolment number becomes invalid from the effective date of registration. **Discussion & Conclusion:-** In given case, Bindusara **can supply** goods through E-vastustore without obtaining GST registration till the time its aggregate turnover does not exceed the threshold limit as per section 22(1) thereby complying with the aforesaid conditions.
B)	➲ As Bindusara is not required to obtain registration under GST, there shall be **no GST implications** on the supplies made by him through electronic commerce platform – E-vastustore. ➲ However, ECO - **E-vastustore – is required to submit the details** of supplies made through it by the unregistered suppliers (including Bindusara) having enrolment number in Form GSTR 8. ➲ Further, no tax at source shall be collected by the E-vastustore in respect of such supplies. ➲ E-vastustore shall allow the supply of goods through it by Bindusara **only if enrolment number** has been allotted on the common portal to him; ➲ E-vastustore shall **not allow any inter-State** supply of goods through it by Bindusara;
C)	i) **Yes,** Bindusara **can opt for composition scheme u/s 10** while applying for registration or even after obtaining registration. This is because, as per **section 10(2)(d),** the restriction to opt for composition scheme is on the person engaged in making any supply of services through an ECO who is required to collect tax at source u/S 52 & not on supply of goods through such ECO. ii) **No**, Bindusara **cannot make inter-state supply** of goods because if he does that, he will become ineligible to remain in composition scheme as per section 10(2)(c).
D)	**ECO- E-vastustore who is required to collect tax at source u/s 52 shall follow the following special procedure for supply of goods made through it by Bindusara – a composition dealer:—** (i) E-vastustore shall not allow any inter-State supply of goods through it by Bindusara; (ii) E-vastustore shall collect tax at source u/s 52(1) for supply of goods made through it by Bindusara and pay to the Government within the time limit; and (iii) E-vastustore shall furnish details of supplies of goods made through it by Bindusara in GSTR-8.
E)	➲ GSTR-8 & deposit of TCS should be made **on/before 10th day of next month** (due date can be extended by Central or State Commissioner). ➲ However, ECO shall **not be allowed** to furnish a statement in GSTR-8 **after the expiry of 3 years** from the due date of furnishing the said statement. Government may allow further extension in certain cases.
F)	**Legal Provision :** Any Electronic Commerce Operator (ECO) shall be liable to penalty if they: ➲ Allow supply through them by an unregistered person, other than one exempted by notification; ➲ Allow inter-State supply by a person not eligible to make such supplies; ➲ Fail to furnish correct details in the statement for supplies made by exempted persons. (122(1B)) **Penalty:** The ECO shall be liable to pay which ever is **higher of:** ➲ ₹10,000, or ➲ The amount of tax involved as if the supply was made by a registered person (excluding composition taxpayers u/s 10).

13 RETURN

Question 1

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) Advice Mr. X regarding filing of monthly statement of outward supplies ie 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, monthly return filer, is engaged in making taxable supplies of goods and services. He furnished the details of his outward supplies in Form GSTR-1 for the month of January on 11th February.

However, on 14th February, the accountant of Mr. X noticed that one invoice issued to Bhawani Traders (registered in Gujarat) for supply of goods of value of ₹1,00,000 (taxable @ 18%) pertaining to January has been inadvertently missed to be declared in Form GSTR-1 furnished for January. He has approached you for the advice before furnishing Form GSTR-3B for the said month.

You are required to briefly discuss whether Mr. X can amend the details of outward supply furnished in Form GSTR-1 of January. If such amendment is permitted and details of Form GSTR-1 are amended, whether the details of said invoice will be available in Form GSTR-2B of Bhawani Traders for the month of January.

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. Also, state the maximum time limit to furnish the GSTR – 1 in case of failure to furnish the same.

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. Advice Mr. X regarding rectification of error. Also, state the maximum time limit to furnish the GSTR – 3B in case of failure to furnish the same.

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.

14) Discuss the Penal provisions, if any for not filing the annual return before the due date

Answer:-

1)	**Legal Provision:** ➲ As per **sec 37** of CGST Act, GSTR-1 for a particular month is filed on or **before the 11th day** of immediately succeeding month i.e. on monthly basis. ➲ However, to ease the compliance requirement, GSTR-1 can be filed quarterly by a registered person with Agg. T/o **upto ₹ 5 crore in preceding financial yea**r under the QRMP Scheme. ➲ 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 ₹ 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 **13th day of the said month.** **Discussion & Conclusion:** ➲ In view of the same, Mr. X **can file its GSTR-1 on quarterly basis** 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.
2)	**Legal Provision:-** ➲ Opting of QRMP scheme is **GSTIN wise** & thus, implies that some GSTINs for a PAN can opt for the QRMP scheme and remaining GSTINs may not opt for the said scheme. **Discussion & Conclusion:-** ➲ In given case, Mr. X **can opt for the QRMP scheme** only for Maharashtra Branch as the option to avail QRMP scheme is GSTIN wise and therefore **distinct person as defined u/s 25** of CGST Act have option to avail QRMP for one or more GSTIN.
3)	➲ Tax is to be paid under the QRMP scheme using challan **PMT-06** as follows:- ➢ For the **first two** months - by 25th of succeeding month and ➢ For the **last** month - along with return for the Quarter i.e. on or before **22nd or 24th** of the month succeeding such Quarter. ➲ Tax can be paid using **any** of the methods i.e. Fixed Sum Method or Self-Assessment method.
4)	**Legal Provision:-** ➲ As per **proviso to rule 59(1)**, a registered person may, after furnishing the details of outward supplies of goods or services or both in Form GSTR-1 for a tax period but before filing of return in Form GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in Form GSTR-1A for the said tax period. ➲ Further, **rule 60(7)** provides that the additional details or amendments in details of outward supplies furnished by the supplier in Form GSTR-1A filed after the due date of furnishing of Form GSTR-1 for the previous tax period shall be reflected in Form GSTR-2B for the current tax period. ➲ This implies that the ITC for the supplies declared or amended by the suppliers through Form GSTR-1A will be available to the recipient in Form GSTR-2B generated for the **next tax period.** **Discussion & Conclusion:** ➲ In the given case, Mr. X has the option to furnish the details of the invoice issued to Bhawani Traders in Form GSTR-1A on or after 14th February but before filing Form GSTR-3B for January. ➲ The corresponding effect of the changes made through Form GSTR-1A on the liability of Mr. X shall be reflected in Form GSTR-3B for January. ➲ Also, the details of missing invoice of Bhawani Traders will be available in its Form GSTR-2B for the month of February.

5)

- ➲ The mechanism of filing revised return for any correction of errors/omission is **not available** under GST but the rectification of errors/omission is **allowed** in the subsequent returns.
- ➲ The error can be rectified by furnishing appropriate particulars in the **"Amendment Tables"** contained in GSTR-1.
- ➲ Thus, Mr. X who discovered an error in GSTR-1 for quarter ended in September 20XX **cannot revise it.**
- ➲ However, he should **rectify said error in the GSTR-1 filed for the month of February** and should pay the tax and interest, if any, in case of short payment, in the return to be furnished for February.
- ➲ However, as per **sec 37(3)** of CGST Act, the rectification of details furnished in GSTR-1 **shall not be allowed after:**
  a) 30th November following the end of the financial year to which such details pertain or
  b) furnishing of the relevant annual return,
  whichever is **earlier.**
- ➲ **Maximum Time limit to furnish GSTR -1 :-**
  However, registered person shall not be allowed to furnish GSTR -1 for a tax period after 3 years from due date of furnishing the said GSTR - 1. Government may allow to file it after 3 years in certain cases.

6)

The following are the cases where a registered person is **debarred** from furnishing details of outward supplies in GSTR-1/IFF:-

1)	**Registered person (other than QRMP Scheme)**	He shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he **has not furnished the return** in Form GSTR-3B for **preceding one month.**
2)	**Registered person (opting for QRMP Scheme)**	He shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if he **has not furnished the return** in Form GSTR-3B for **preceding tax period.**
3)	**If intimation is issued under Rule 88C(1) for a Tax period**	**Registered Person cannot furnish GSTR-1 or using IFF** for a subsequent tax period, unless he deposits intimated amount or furnishes a reply to explain it
4)	**If intimation is issued under rule 88D(1) for a Tax period(s)**	**Registered Person cannot file GSTR-1 or using IFF** for subsequent tax period, unless he pays such excess ITC or furnishes a reply to explain it.
5)	**Bank details under rule 10A**	Registered Person cannot file GSTR-1/using IFF, if he **has not furnished details of bank account** as per rule 10A.

7)

- ➲ As per **section 39(9)** 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.
- ➲ **But the maximum time limit for making rectification is earlier of:-**
  - ➢ 30th November following the end of the financial year to which such details pertain or
  - ➢ Actual date of furnishing of relevant annual return.
- ➲ Any tax payable as a result of such error or omission will be paid **along with interest.**
- ➲ **Exception:** 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.
- ➲ **Maximum Time limit to furnish GSTR -3B :-**
  However, registered person shall not be allowed to furnish GSTR -3B for a tax period after 3 years from due date of furnishing the said GSTR -3B. Government may allow to file it after 3 years in certain cases.

8)

Legal Provision:-

- ➲ As per **section 41** 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 **not been paid** by supplier, then the recipient shall reverse such ITC availed by him along with the applicable interest in prescribed manner.
- ➲ However, if supplier pays such tax later, the recipient **may re-avail the ITC reversed** by him in prescribed manner without any time limit.

Discussion & Conclusion:-

- ➲ In given case, the **ITC claimed by Mr. X is required to be reversed along with interest.**
- ➲ However, when Mr. Umesh makes the payment of GST to the government, Mr. X will be **allowed to re-claim**

	the credit of such amount in her GSTR 3B. ➲ In case, where Mr. Umesh pays the amount of GST after 3 years, Mr. X **would be eligible to re-claim it as there is no time limit** to re-claim the ITC.
9)	➲ As per **sec 44 of CGST Act 2017, Every registered person** is required to file an annual return electronically in prescribed form. ➲ **However, the following persons are not required to file annual return**:- ➢ Casual Taxable Person, ➢ Non-resident taxable person, ➢ Input Service Distributors and ➢ Persons paying tax under section 51 or 52. ➲ **Section 44 is not applicable** to any department of Central Government/ State Government/ local authority, whose books of account are subject to audit by the Comptroller & Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for time being in force. ➲ On the recommendations of Council, Commissioner may exempt any class of registered persons from filing annual return by a notification. ➲ **Due date to furnish Annual return:-** ➢ Annual return for a financial year shall be filed by **31st December of Next financial year.** ➢ Due date **may be extended** by Commissioner. ➢ However, registered person shall not be allowed to furnish an annual return for a financial year after 3 years from due date of furnishing the said annual return. Government may allow to file it after 3 years in certain cases.
10)	**No,** the advice of the consultant is **not correct.** **Legal Provision:-** ➲ As per **section 45** of CGST Act read with **rule 81** 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. ➲ The final return has to be filed **within 3 months** of the **later** of:- ➢ date of cancellation or ➢ date of order of cancellation. **Discussion & Conclusion:-** ➲ In the given case, the **registration** of the Mr. X has **not been cancelled.** ➲ Therefore, the requirement of filing final return will arise only when the registration of company gets cancelled.
11)	➲ As per **section 46** 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 **within 15 days.** ➲ 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.
12)	➲ As per **sec 47(1)** of CGST Act, if there is a **delay in furnishing** of Returns (including returns under QRMP Scheme) u/s 39 by registered person by the due dates, then he is **liable to pay late fee** which is **LOWER** of:- ➢ ₹200 (i.e. 100 for CGST & SGST/UTGST each) for every day during which such failure continues or ➢ ₹10,000 (i.e. ₹5,000 for CGST & SGST/UTGST each) ➲ 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 has been rationalized as under- 1) **For the registered persons who have nil outward supplies in the tax period or whose total tax payable in the GSTR-3B is Nil:-** ➢ late fee = ₹20 (i.e. 10 for CGST & SGST/UTGST each) per day of default but maximum is ₹500 (i.e. ₹250 for CGST & SGST/UTGST each).

	2) **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):-** i) if the aggregate turnover is not exceeding ₹1.5 crores in the preceding financial year:- ➢ late fee = ₹50 (i.e. 25 for CGST & SGST/UTGST each) per day of default but maximum is ₹ 2000 (i.e. ₹1000 for CGST & SGST/UTGST each). ii) if the aggregate turnover is exceeding ₹1.5 crores but not exceeding ₹ 5 Crores in the preceding financial year:- ➢ late fee =₹50 (i.e. ₹25 for CGST & SGST/UTGST each) per day of default but maximum is ₹ 5000 (i.e. ₹2500 for CGST & SGST/UTGST each). 3) **For the registered persons other than those covered in (1) and (2) above (i.e. aggregate turnover is exceeding ₹ 5 Cr in preceding financial year:-** ➢ late fee = ₹ 50(i.e. ₹25 for CGST & SGST/UTGST each) per day of default but maximum is ₹ 10,000 (i.e. ₹5000 for CGST & SGST/UTGST each).
13)	➲ 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. ➲ **As per section 48(2)** of CGST Act, a registered person may authorise an approved GSTP to furnish:- ➢ the details of outward supplies under section 37, and ➢ the return under section 39 or ➢ annual return under section 44 or ➢ final return under section 45 and ➢ to perform other prescribed functions. ➲ Thus, the GSTP can furnish the specified documents or information on behalf of registered person with **prior authority of the registered person.** ➲ 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.
14)	➲ As per **section 47(2)**, if a registered person **fails to furnish the Annual return u/s 44** by the due date, he is liable to pay late fee which is **LOWER** of:- ➢ ₹ 200 (i.e. 100 for CGST & SGST/UTGST each) for every day during which such failure continues or ➢ 0.5% (i.e. 0.25% for CGST & SGST/UTGST each) of the turnover of registered person in the State/UT. ➲ However, as per the **CBIC notification,** the total late fees payable under **section 47** by the registered person who fails furnish annual return in **GSTR – 9 under section 44** by the due date has been rationalized as under- ➢ If aggregate turnover of registered person in the relevant financial year is not exceeding ₹ 5 Crores:- ☛ ₹ 50 per day of default (i.e. ₹ 25 per day each under CGST & SGST/UTGST) but ☛ Maximum is 0.04% (i.e. 0.02% under CGST & SGST/UTGST each) of turnover in State or Union territory. ➢ If aggregate turnover of registered person in the relevant financial year is exceeding ₹ 5 Crores but not exceeding ₹20 Crores:- ☛ ₹100 per day of default (i.e. ₹ 50 per day each under CGST & SGST/UTGST) but ☛ 0.04% (i.e. 0.02% under CGST & SGST/UTGST each) of turnover in State or Union territory. ➢ If aggregate turnover of registered person in the relevant financial year is exceeding ₹ 20 Crores:- ☛ ₹ 200 per day of default (i.e. ₹100 per day each under CGST & SGST/UTGST) but ☛ 0.5% (i.e. 0.25% under CGST & SGST/UTGST each) of turnover in State or Union territory.

14 REFUND

Question 1

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.

(a) With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilised input tax credit is allowed.

(b) What is the time limit within which refund claim can be filed generally under the GST law?

(c) What is the amount of refund Y Ltd. will get in accordance with law?

(d) What is the relevant date and rate of interest as per GST law in the given case above?

(e) DF Ltd. wants you to inform it about the consequences, in case RBI does not give the extension.

Answer:-

a)	**Legal Provision :** A RP may claim refund of unutilised ITC at the end of any tax period in the following cases (**Sec 54(3)):** **1) Zero-Rated Supplies (Without Payment of Tax):** Refund is allowed for exports or supplies to SEZ units/developers, provided: ➲ No export duty is payable onthe goods exported out of India **& IGST paid on ZRS of goods**, and ➲ Supplier has not availed drawback of CGST or claimed IGST refund on such supplies. **2) Inverted Duty Structure: Refund is allowed where** ➲ Input tax rate > Output tax rate, and ➲ Output supplies are not nil-rated or fully exempt, ➲ Except for supplies notified by the Government (on Council's recommendation), where refund is restricted.
b)	➲ As per **section 54,** A person claiming refund of any tax, interest, paid on such tax or any other amount paid by him, may make an application **before the expiry of 2 years from the 'Relevant Date'** in prescribed form and manner. ➲ However, registered person may claim refund at the end of any tax period for the following:- ➢ any unutilised ITC in case of zero-rated supplies made without payment of tax or ➢ accumulated ITC on account of inverted duty structure. ➲ Further, the time limit to apply for refund is not applicable in case of refund of excess balance in electronic cash ledger.
c)	➲ As per **first proviso to section 54(3)** 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 **₹ 6,00,000.**

d)	**Legal Provision:-** ➲ If supply of services is completed before receipt of payment, the relevant date for refund is the date of receipt of payment in convertible foreign exchange or INR (as permitted by RBI), e.g., 30th December, 20XX. ➲ As per Sec 56, if a refund is not issued within 60 days from the date of receipt of refund application, the applicant is entitled to interest @ 6% p.a. on the delayed amount. ➲ Interest is calculated from the 61st day till the actual date of refund, as per prescribed rules and conditions. **Discussion & Conclusion:-**Since in given case, tax ordered to be refunded is **not refunded within 60 days** from the date of receipt of application i.e. 31st January, 20YY, **interest @ 6% p.a. is payable from 1st April to 30th April.**
e)	**Legal Provision:-** ➲If an applicant receives refund of IGST paid on export of goods but fails to realise the sale proceeds within the prescribed or extended time, they must: ➲ Deposit the refunded amount along with interest @ 18% p.a., ➲ Within 30 days of expiry of the said period, ➲ To the extent of non-realisation of sale proceeds. However, if the RBI writes off the requirement of realisation on merits, no recovery shall be made. **Discussion & Conclusion:-** ➲ 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. ➲ In case of failure to do so, the amount will be recovered in accordance with the provisions relating to recovery of erroneous refund and also penalty can be imposed.

Question 1.1

Answer the following question independently

1) M/s Delta Exports, a registered person, filed a refund application for unutilized ITC on account of zero-rated supply of goods. Aadhaar authentication of the applicant was completed successfully.

However, based on system-based risk identification and evaluation, the applicant was categorized as high-risk. Accordingly, the Proper Officer recorded reasons in writing and decided not to grant provisional refund.

Based on above information, Answer the following:

1. Whether the action of the Proper Officer in denying provisional refund is valid?

2. What is the correct procedure for processing the refund claim thereafter?

2) M/s MDK Industries, a registered person, is engaged in the manufacture and export of Chai Masala. The firm filed an application for refund of unutilised Input Tax Credit (ITC) arising on account of zero-rated supply of goods. The refund application has been duly acknowledged.

All documents are found to be in order and Aadhaar authentication under Rule 10B of the CGST Rules, 2017 has been completed.

Based on above information, Answer the following:

1. Is M/s MDK Industries eligible for grant of provisional refund under Rule 91(2) of the CGST Rules, 2017? Give reasons.

2. What would be your answer if M/s MDK Industries was engaged in the manufacture and export of Pan Masala instead of Chai Masala?

Answer:-

1.	In the present case, although Aadhaar authentication was completed, the applicant was flagged as high-risk by the system. The Proper Officer duly recorded reasons in writing for denying provisional refund.

		1. The action of the Proper Officer is **legally valid,** since Rule 91 does not make Aadhaar authentication the sole criterion for grant of provisional refund. The Proper Officer is **empowered to deny** provisional refund based on risk parameters, provided reasons are recorded in writing. 2. After denial of provisional refund, the refund application shall be processed under Rule 92, whereby the Proper Officer shall: - **Verify** the documents and records furnished, and - **Issue a final refund order,** without granting any provisional refund.
2.	**1.**	➲ **Yes,** M/s MDK Industries is **eligible for grant of provisional refund** under Rule 91(2) of the CGST Rules, 2017. ➲ Provisional refund is denied only to categories of registered persons notified by the Central Government under **Section 54(6).** ➲ As Chai Masala is not included in the list of goods notified, and Aadhaar authentication has been completed, the firm satisfies all conditions for grant of provisional refund.
	2.	➲ **No,** M/s MDK Industries would **not be eligible for provisional refund** if it were engaged in the manufacture and export of Pan Masala. ➲ As per **Notification No. 14/2025,** registered persons engaged in the supply of **Pan Masala** are specifically barred from receiving provisional refund under **Section 54(6)** of the CGST Act, even if Aadhaar authentication under Rule 10B has been completed.

Question 2

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 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:-

1) 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.

2) Betty Enterprises is a 100% export-oriented undertaking. It has claimed the ITC on goods supplied to it by Synotex Pvt. Ltd.

3) 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.

4) 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:-

➲ Export of goods is treated as a zero-rated supply & subject to blocked credit, ITC can be availed for making zero-rated supplies, even if exempt.

➲ A RP may claim refund of unutilised ITC at the end of any tax period for zero-rated supplies made without payment of tax. **(Sec 54)**

➲ In such cases (export under bond/LUT), refund of ITC shall be computed using the following formula **(Rule 89(4)**:

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' u/s **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 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.

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 3

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.	ITC on inputs and input services during the tax period	12,00,000

[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 (₹)
Net ITC on input and input services	12,00,000
Turnover of zero-rated supply of goods:- Turnover of zero-rated supply of goods **[Note 4 & 5]**	12,00,000
Turnover of zero-rated supply of services:- [Aggregate of payments received during the relevant period and services where supply has been completed for which payment had been received in advance in any prior period reduced by advances received for which the supply of services has not been completed during the relevant period] [48,00,000 + 14,00,000 - 12,00,000] **[Note 2]**	50,00,000
Adjusted total turnover = Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined as above + non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies] [₹76,00,000 - ₹2,00,000 + ₹50,00,000 + ₹10,00,000 - ₹8,00,000 **[Note 1 &3]**	1,26,00,000

Refund of ITC for zero-rated supply of goods and zero-rated supply of services = [12,00,000 x (₹62,00,000/ ₹1,26,00,000)]	**5,90,476 (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. 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.
3. The exempt supplies are logically assumed to be other than zero rated supplies.
4. The value declared in shipping bill and tax invoice is same as not separate given in the question.
5. 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.

Question 4

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*	Output 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:-

- A RP may claim refund of unutilised ITC at the end of any tax period where credit has accumulated due to inverted duty structure, i.e., the tax rate on inputs is higher than that on output supplies (excluding nil-rated or fully exempt supplies), except for notified goods/service. **[Sec 54(3)]**
- in such cases, refund of ITC shall be calculated using the following formula **[Rule 89(5)]**

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

Where,

A. **"Net ITC"** means input tax credit availed (ITC) on **inputs** during the relevant period.

B. **"Adjusted Total turnover"** means the sum total of the value of:-

a) The turnover in a State or a UT as per sec 2(112) excluding the turnover of services and

b) The turnover of ZRS of services as per clause (D) above & non-zero-rated supply of services,

excluding –

i) the value of exempt supplies other than zero-rated supplies

ii) 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)

Question 5

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][Study Mat]

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]**	92,105
Supply of goods to Export Oriented Unit **[Note 3]**	Nil
Export of exempt supplies **[Note 4]**	1,14,000
Total refund claim admissible	**2,06,105**

Notes:-

1. Zero-Rated Supplies (Exports):

➲ As per Sec 16(1)(a) of the IGST Act, export of goods is a zero-rated supply & Kailash Global (P) Ltd. exports goods without payment of tax under LUT, hence it may claim refund of unutilised ITC at the end of any tax period.

➲ However, refund is not allowed if the exported goods are subject to export duty.

2. Inverted Duty Structure:

➲ Refund is also allowed where ITC accumulates due to the rate of tax on inputs being higher than that on output supplies (excluding nil-rated or fully exempt supplies), except for notified goods/services. **(Sec 54(3))**

➲ As per **Rule 89(5),** the refund of ITC in case of inverted duty structure shall be calculated using the following formula:

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

Where,

- **"Net ITC"** means input tax credit availed (ITC) on **inputs** during the relevant period
- **"Adjusted Total turnover"** means the sum total of the value of:-

a) The turnover in a State or a UT as per sec 2(112) excluding the turnover of services and

b) The turnover of ZRS of services as per clause (D) above & non-zero-rated supply of services,

excluding –

i) the value of exempt supplies other than zero-rated supplies

ii) 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 x 10,00,000/ 28,00,000) – (₹50,000 X 3,50,000 / 5,32,000)

= ₹1,25,000 - ₹32,895

= ₹92,105

3. Deemed Exports (Supplies to EOUs):

➤Supplies to EOUs are treated as deemed exports(sec 147) & refund in case of deemed exports can be claimed by the supplier only if:

➲ The recipient does not avail ITC, and

➲ The recipient furnishes an undertaking to that effect.

➲ Since the recipient is availing ITC, Kailash Global (P) Ltd. cannot claim refund for deemed export.

4. Zero-Rated Supply – ITC & Refund:

➲ ITC may be availed for making zero-rated supplies, even if they are exempt, subject to blocked credit.(sec 16 of IGST ACT) & also refund of unutilised ITC is allowed for zero-rated supplies made without payment of tax.

➲ As per Rule 89(4) , in such cases (supply under bond/LUT), refund of ITC is computed using 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

where,

a)"Net ITC" means ITC availed on inputs and input services during the relevant period

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,

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=₹ 5,32,000 i.e. (3,50,000+2,00,000-18,000) (ITC on outdoor catering disallowed under section 17(5) of CGST Act, 2017), and

Adjusted total turnover =₹28,00,000 (as computed above in note 2)

➲ Thus, **Maximum refund amount under rule 89(4) =₹5,32,000 x₹6,00,000/₹28,00,000 = ₹1,14,000.**

15 JOBWORK

Question 1

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 40%, for related waste as 5% 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)	**Legal Provision:-** ➲ **Section 2(68)** of CGST Act gives the meaning of job work as any **treatment or process** undertaken by a person on **goods** (inputs or capital goods) **belonging to another** registered person (i.e. Principal) & the expression "job worker" shall be construed accordingly. **Discussion & Conclusion:-** ➲ When goods are manufactured by Sudama Industries Ltd. for **Plasto Manufacturers,** it is **job work** as the process is undertaken on inputs (plastic & moulds) supplied by principal (Plasto Manufacturers). ➲ When goods are manufactured for **Solid Pipes,** it is **manufacture on own account** as the pipes are manufactured from company's own raw material. ➲ Further, processing or treatment on job work basis is **a supply of service** as per **para 3 of Schedule II** to CGST Act and manufacture of pipes on own account is a **supply of goods.**
2)	**Legal Provision:-** ➲ As per **section 143** of CGST Act, registered principal may send goods **(inputs or capital goods)** to a job worker for job work **without payment of tax.** ➲ But on completion of job work or otherwise, the Principal shall:- ➢ either **bring back** the goods to his place of business or ➢ supply (including export) the same directly from the place of business of job worker **within 1 year or 3 years** from sending the inputs or capital goods respectively to the job worker or direct receipt by the job worker from the supplier. ➲ Time limit of 3 years to return goods is **not applicable to moulds, dies, jigs, fixtures & tools.** ➲ If the above time frame of 1 year or 3 years is **not adhered to**, the activity of sending the goods for job work shall be **deemed to be a supply** by the principal on the day when the said inputs/ capital goods were sent out by him. ➲ Thus, sending goods for **job work is not a supply as such, but it acquires the character of supply** only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business of job worker within 1/3 years of being sent out. ➲ Further, **rule 45** of CGST Rules states that inputs, semi-finished goods or capital goods being sent for job work shall be sent **under the cover of a delivery challan** issued by the principal. **Discussion & Conclusion:-** ➲ The sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is **not a supply** as the manufactured pipes **are received back within** the stipulated time and the provisions relating to return of goods are **not applicable in case of moulds.** ➲ Plasto Manufacturers need **not issue a taxable invoice** for sending the inputs to Sudama Industries Ltd. but should send the inputs under the **cover of a challan as per rule 45.**
3)	**Yes.** As per CBIC Clarification, job worker **can use his own goods** for providing the services of job work **in addition** to the goods received from the principal.
4)	**Legal Provision:-** ➲As per **section 15(2)(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 &/or services.

	Discussion & Conclusion:- ➲ As Sudama Industries Ltd. is manufacturing the plastic pipes **on job work basis, it should not include** the value of free of cost plastic & moulds supplied by Plasto Manufacturers in its job charges. ➲ The scope of supply of Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by Plasto Manufacturers & thus, it is **not liable to pay for raw material.** ➲ Therefore, **value of plastic & moulds should not be included** in its job charges **u/s 15(2)(b)** even though the same is incurred by Plasto Manufacturers (recipient of job work service).
5)	➲ **Yes,** the Sudama Industries Ltd. **is eligible to take input tax credit (ITC) of inputs used by him additionally** 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 & taxable in the hands of the job worker. ➲ However, it **cannot take ITC of goods supplied to him** by the Plasto Manufacturers (i.e. the principal) for Job work.
6)	**Legal Provision:-** ➲ As per **section 19** of CGST Act, the capital goods directly sent to a job worker are required to be returned to the principal **within 3 years [extendible by another 2 years]** 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. ➲ In such a case, **principal can avail** 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. ➲ The aforesaid time period of **3 years does not apply to** moulds and dies, jigs and fixtures or tools sent out for job work. **Discussion & Conclusion:-** a) Plasto Manufacturers is **entitled to take and retain ITC** on capital goods (machine) directly sent to job worker (Sudama Industries Ltd.) for job work without being brought into its premises since the said **machine was returned within the specified time period of 3 years** from the date its receipt (i.e. 13th January, 2021) by Sudama Industries Ltd. Plasto Manufacturers is **entitled to take and retain ITC** of moulds, even if Sudama Industries Ltd. does not return the **moulds** to Plasto Manufacturers. It shall **not be considered as a supply** of mould to Sudama Industries Ltd. by Plasto Manufacturers & thus, Plasto Manufacturers **will be eligible to retain ITC availed by them on such mould.** b) If the machine is **not returned** by Sudama Industries Ltd. within 3 years from 13th January, 2021 (date of receipt of capital goods by job worker), it shall be **deemed** that such **machine had been supplied** by Plasto Manufacturers to Sudama Industries Ltd. **on 13th January, 2021** and Plasto Manufacturers shall be liable to **pay the tax along with applicable interest.** However, if it applies for extension, then commissioner can further grant extension upto 2 years and **no tax will be payable** in that case. c) Plasto Manufacturers **would be still eligible to retain ITC availed** by them on such plastic because as per **section 19** of CGST Act, the **principal shall be entitled to take credit of input tax** 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 - **returned** to the principal **or** - **supplied** from the place of business of the job worker **within 1 years [extendible by another 1 year]** from the date of receipt of such inputs by the job worker.
7)	a) **No.** As per **explanation (ii) to section 22,** 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 & the value of such goods shall **not be included in aggregate turnover** of registered job worker. b) **Section 143** 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. 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.
- **Accordingly, the GST liability of Sudama Industries Ltd. will be computed as under:-**

Particulars	Taxable Value (₹)	GST (₹)
Own supply of plastic pipes (GST @ 40%)	7,50,000	3,00,000
Job Charges (GST @ 18%)	2,00,000	36,000
Sale of metal waste (GST @ 5%)	45,000	2,250
Total GST payable (A)+ (B)	**9,95,000**	**3,38,250**

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.**

16 ASSESSMENT & AUDIT

Question 1

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	a) **Yes,** As per **section 60** 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:- ➲ value of goods or services or both or ➲ rate of tax applicable thereto. Thus, Kulbhushan & Sons **was right in applying** for payment of tax on goods supplied by it on provisional basis since it was unable to determine the value of the goods supplied b) The proper officer shall pass an order allowing payment of tax on provisional basis **within 90** days from the date of receipt of request & shall specify the value or rate for payment of tax. c) Proper officer shall pass the final assessment order **within 6 months** from the date of communication of the

	order of provisional assessment. On sufficient cause being shown & for reasons to be recorded in writing, the time limit may be **extended** as follows:- ➲ by Joint Commissioner/ Additional Commissioner for further period **not exceeding 6 months** ➲ & by Commissioner for such further period **not exceeding 4 years.**
2	**Legal Provision:-** ➲ As per **section 60(4)** of CGST Act, 2017, if tax liability as per final assessment is higher than under provisional assessment **i.e. tax becomes due** consequent to order of final assessment, ➢ registered person shall be liable to **pay interest** 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., ➢ **from** 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. **Discussion & Conclusion:-** ➲ In this case, due date for payment of tax on goods cleared on 25th January under provisional assessment is **20th February.a** ➲ Kulbhushan & Sons is liable to pay following **interest** u/s 60(4) on goods supplied:- = ₹1,80,000 × 18% × 48/365 days **= ₹4,261 (rounded off)**
3	**Legal Provision:-** ➲ As per **section 60(5)** of CGST Act, if tax liability as per final assessment is less than in provisional assessment i.e. **tax becomes refundable** consequent to the order of final assessment, ➢ registered person shall be **paid interest** u/s 56 at 6% p.a. ➢ 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. **Discussion & Conclusion:-** ➲ In given case, since refund is made on 05th June which is **within 60 days** from the date of receipt of application of refund (09th April), **interest is not payable** to Kulbhushan& Sons on tax refunded. ➲ However, if refund is made on 15th June i.e. **after 60 days** from date of receipt of application of refund (09th April), **interest is payable** to Kulbhushan& Sons on tax refunded as under:- = ₹4,20,000 × 6% × 7/365 days **= ₹483 (rounded off)**
4	➲ **Yes**. As per **section 61** of CGST Act, Proper officer may scrutinize the return & related particulars furnished by Kulbhushan & Sons (registered person) to **verify correctness** of return. ➲ The proper officer **shall issue notice** to it to inform the discrepancy and seek the explanation thereto and where possible, **quantify** the amount of tax, interest and any other amount payable in relation to such discrepancy. ➲ The registered person shall furnish an explanation for the discrepancy **within 30 days or within further period permitted** from the date of service of notice. ➲ If **proper explanation is not furnished** for the discrepancy detected in return filed by the registered person while conducting scrutiny, the proper officer may:- (i) Proceed to **conduct audit** of the registered person under scrutiny **u/s 65,** (ii) **Direct** the registered person under scrutiny to get his records including books of account examined & **audited** by a Chartered Accountant or a Cost Accountant nominated by the commissioner i.e. **special audit u/s 66,** (iii) Undertake procedures of **inspection, search & seizure u/s 67**, or (iv) Initiate proceeding to **determine the tax and other dues u/s 73 or 74 or 74A**.

5	➲ **Yes,** as per **section 62** of CGST Act, if Kulbhushan & Sons (registered person) **fails to furnish the return** u/s 39 or 45 even after the service of a notice under section 46, the proper officer may:- ➢ proceed to **assess his tax liability** to the best of his judgement taking into account all the relevant material available or gathered and ➢ issue an **assessment order within 5 years** from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.
6	**Assessment order passed by the proper officer may be withdrawn in following cases:-** **i) Assessment of non-filers of returns:-** ➲ As per **section 62** 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 60 days** of the service of the best judgment assessment order. ➲ However, **the liability to pay interest u/s 50(1) or late fee u/s 47 shall continue.** **ii) Summary Assessment:-** ➲ As per **section 64(2)** of CGST Act, 2017, Additional/ Joint Commissioner **may withdraw** summary assessment order:- a) on **an application** filed by taxable person **within 30 days** from the date of receipt of order or b) **on his own motion,** if he finds such order to be erroneous. ➲ Additional/ Joint Commissioner may instead follow the procedures laid down in **Section 73 or 74 or 74A** to determine the tax liability of such taxable person.
7	**Legal Provision:-** ➲ As per **section 65(4)** of CGST Act, 2017, audit shall be completed **within 3 months** from the date of commencement of audit. However, Commissioner can extend it by a **further period not exceeding 6 months.** ➲ Further, the **commencement of audit means the later** of the following:- ➢ the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or ➢ the actual institution of audit at the place of business of the taxpayer. **Discussion & Conclusion:-** ➲ Accordingly, in given case, the **date of commencement of audit is later of:-** ➢ date on which records & other documents are made available by Kulbhushan & Sons, i.e. **25th July or** ➢ actual institution of audit at the place of business of Kulbhushan & Sons, i.e. **8th August.** ➲ Thus, the **date of commencement of audit is 8th August** & audit shall be completed **within 3 months** from the date of commencement of audit (8th August).

17 ADVANCE RULING

Question 1

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	**Legal Provision:-** As per **section 95(c)** 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. **Discussion & Conclusion:-** Therefore, it is **not mandatory** for a person seeking advance ruling to be registered.
2	**Legal Provision:-** ➲ As per section 97(2) of CGST Act, 2017, **Advance Ruling can be sought for the following questions:-** a) classification of any goods &/or services, b) applicability of a notification issued under provisions of GST Act(s), c) determination of time and value of supply of goods &/or services,

	d) admissibility of input tax credit of tax paid or deemed to have been paid, e) determination of the liability to pay tax on any goods &/or services, f) whether applicant is required to be registered, 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 &/or services, within the meaning of that term. ➲ One of the **questions/ matters** on which advance ruling can be sought:- ➢ is to determine whether any particular thing done by the applicant with respect to any goods or services or both **is a supply** of goods or services or both under GST **and** ➢ also the classification of any goods or services or both. ➲ Determination of **place of supply is not one of the specified questions/ matters** on which advance ruling can be sought under section 97(2). ➲ As per **section 96** of CGST Act, 2017, AAR is constituted under the respective SGST Act / UTGST Act and not under the CGST Act & hence, the Ruling given by AAR of one State/ Union Territory shall be applicable only within the jurisdiction of the concerned State/ Union Territory. **Discussion & Conclusion:-** ➲ Ranjan **can seek advance ruling to determine** ➢ whether supply of goods proposed to be undertaken amounts to supply of goods under GST law and ➢ also the classification of said goods. ➲ Questions to determine place of supply cannot be raised with AAR & hence, Ranjan **cannot seek advance ruling to determine place of supply** of goods proposed to be supplied by him. **Note:-** 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 & SGST or IGST.
3	**Legal Provision:-** ➲ As per **definition of advance ruling u/s 95(a)** 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 &/or services **being undertaken or proposed** to be undertaken by applicant. **Discussion & Conclusion:-** ➲ **Advance ruling can be sought** not only for activities/transactions proposed to be undertaken but also for activities/transactions **already undertaken** by the applicant. ➲ Hence, Ranjan **can seek advance ruling** for supply of goods being already undertaken by him.
4	➲ **No**, Ranjan's view is **not correct because** as per **section 98(6)** of CGST Act, 2017, AAR shall pronounce its ruling in writing within 90 days from the date of receipt of application. ➲ **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:-** 1) Upon receipt of an application, AAR shall **send a copy** of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. 2) The AAR may then **examine** the application along with the records. 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. 3) **Application will not be admitted** 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. 4) If application is **rejected**, order should be a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant. 5) If application is **admitted**, AAR shall pronounce its advance ruling on question specified in application after examining further material placed before it by applicant or obtained by Authority.

	6) Before giving the ruling, **AAR must give** an opportunity of being heard to the applicant or his authorised representative and concerned officer or his authorised representative. 7) If there is a **difference of opinion** between the members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue. 8) The Authority shall **pronounce its advance ruling** in writing **within 90 days** from the date of receipt of application. 9) **A copy of the advance ruling** duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.
5	**Legal Provision:-** ➲ 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. **Discussion & Conclusion:-** ➲ 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.
6	➲ **No, the tax advisor's view is not correct.** ➲ The **concerned officer, jurisdictional officer or applicant aggrieved** by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR). ➲ Such appeal must be filed **within 30 days [extendible by another 30 days]** from the date on which the ruling sought to be appealed against is communicated. ➲ After hearing the parties to the appeal, the AAAR must pass an **order confirming or modifying** the ruling appealed against **within 90 days** of the filing of an appeal. ➲ If members of AAAR **differ on any point** referred to in appeal, it shall be deemed that no advance ruling can be issued for the question under appeal. ➲ A **copy** of advance ruling pronounced by AAAR is sent to applicant, concerned officer, jurisdictional officer and the Authority.
7	**No.** As the **GST Act(s) do not provide** for any appeal against the ruling of AAAR, no further appeals shall lie and the ruling of AAAR **shall be binding** on the applicant and the jurisdictional officer in respect of applicant. However, Writ Jurisdiction may lie before the High Court or Supreme Court.
8	**Legal Provision:-** ➲ **As per section 103 of CGST Act, 2017,** 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. ➲ The advance rulings are given in personem and not in rem, that is, **not to the whole world** and therefore, rulings cannot apply to other similar cases. ➲ This implies that an advance ruling **is not applicable to similarly placed other taxable persons** in the State. It is only limited to the person who has applied for an advance ruling. **Discussion & Conclusion:-** ➲ In given case, Sambhav will **not be able to apply the classification** of goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.
9	➲ **Yes.** As per **section 104(1)** of CGST Act, an **advance ruling shall be held as void-ab-initio**, if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. ➲ In such a situation, **all the provisions of the GST Act(s) shall apply** to the applicant as if such advance ruling had never been made (**but excluding** the period when advance ruling was given and up to the period when the order declaring it to be void is issued). ➲ An order declaring advance ruling to be void **can be passed only after hearing the applicant.**

18 DEMAND & RECOVERY

Question 1

Mr. Ashok is a chartered accountant who started his own practice just before 2 months. He approaches M/s ABC Consultants, a well known 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) (for reasons other than fraud) on 31.12.2029 u/s 74A(1) of CGST Act, 2017 on account of short payment of tax during the period between 01.07.2024 and 31.12.2024. He has been given an opportunity of personal hearing on 15.01.2030. Advice Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.

   If in above question, the SCN is issued on 31.01.2029 and Rajul is given an opportunity of personal hearing on 15.02.2029, based on which she contends that the show cause notice issued to her is time barred in law. Examine the technical veracity of the contention of Rajul.

2. KK Pvt. Ltd. self-assessed its CGST liability as ₹ 1,15,000 for the month of May 2024 but failed to make the payment.

   Subsequently the Department initiated penal proceedings against KK Pvt. Ltd. for recovery of penalty u/s 74A for failure to pay GST and issued show cause notice on 12th September 2024, which was received by KK Pvt. Ltd. on 17th September 2024.

   KK Pvt. Ltd. deposited the tax along with interest on 27th September 2024 and informed the department on the same day.

   Department is contending that he is liable to pay a penalty of ₹ 57,500 (i.e. 50% of ₹ 1,15,000).

   Examine the correctness of the stand taken by the Department.

3. Inoba Bhave is engaged in supply of taxable services. He supplies some services in the month of April and collects IGST of Rs. 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.

4. 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 74A of CGST Act, 2017 (cases involving fraud to evade tax):-

S.No.	Date on which credit was taken wrongly	Amount of ITC taken wrongly(₹ in lakh)	Present status
1	31st January, 2025	200	Adjudication order passed on 26th July, 2027 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
2	30th June, 2025	250	Adjudication order passed on 26th August, 2027 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty.
3	30th October, 2025	120	Show cause notice has been issued on 5th September, 2027 demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken.

4	30th January, 2026	50	Statement of the Managing Director has been recorded on 6th September, 2027 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 20-10-2027.

5. 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, 2025. He clears the dues on 20th April, 2025. However, the Department, on verification, identifies additional suppression of ₹2,00,000 in the same month of January, 2025. 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 25.05.2025 and the taxpayer complies with the adverse adjudication order on 27.07.2025. Determine tax, interest & penalty payable at each stage.

6. 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.

7. M/s Orion Industries, a registered person under GST, is issued a Show Cause Notice (SCN) under section 74A of the CGST Act, 2017 for the following tax periods:

Tax Period	CGST (₹)	IGST (₹)
April 2025	8 Lakhs	15 Lakhs
May 2025	12 Lakhs	18 Lakhs
June 2025	6 Lakhs	10 Lakhs

Further, a penalty of ₹50 lakh under section 122 of the CGST Act, 2017 is also proposed in the SCN.

Based on above information, Answer the following:

1. What is the relevant amount for deciding the proper officer for issuance of SCN?

2. Who is the proper officer competent to issue the SCN and pass the order?

3. Will monetary limits be applicable if notice is issued only u/s 122?

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 u/s 74A(1) of CGST Act, 2017 is **not sustainable.** (ii) As per **section 74A(2), such notice** shall be issued **within 42 months (i.e. 3 years & 6 months)** from the due date for furnishing of annual return for the financial year to which such amount 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. (iii) The SCN has been issued for the period between 01.07.2024 to 31.12.2024 which falls in the financial year (FY) 2024-25. The due date for furnishing annual return for FY 2024-25 is 31.12.2025. Thus, **the SCN u/s 74A(1) ought to have been issued latest by 30.06.2029.** (iv) Since the notice has been issued after 30.06.2029, the **entire proceeding is barred by limitation and deemed to be concluded u/s 75(10).** b) The contention of Rajul is **not valid** in law as the SCN u/s 74A(1) ought to have been **issued latest by 30.06.29.** Since in given case, the notice has been **issued on 31.01.2029, notice is not time-barred.**

2.

Legal Provision:-

- As per **section 74A(11)** of CGST Act, 2017, if self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty **u/s 74A(5)(i)** equivalent to 10% of tax due or ₹10,000, **whichever is higher**, is payable.
- Thus, **option u/s 74A(8)(ii) to pay tax within 60 days** of issuance of show cause notice to avoid penalty **is not** available in case of self-assessed tax.

Discussion & Conclusion:-

- The due date for payment of tax for the month of May 2024 is 20.06.2024.
- Since in given case, KK Pvt. Ltd. has not paid the self-assessed tax within 30 days of due date [i.e., 20.06.2024], **penalty equivalent to the higher** of the following is payable by him:-
  - ₹11,500 which is 10% of tax ₹1,15,000 or
  - ₹10,000.
- Thus, the penalty payable is **₹11,500 each under CGST & SGST.**
- Hence, the **stand taken** by the Department that penalty will be levied on KK Pvt. Ltd. is correct, but the amount of **penalty ₹57,500 is not correct.**

Author's note:- With the introduction of Section 74A under GST, matters involving interpretational disputes are now governed by this new section from F.Y. 24-25, making Sections 73 & 74 inapplicable in such cases. Circular No. 76/50/2018, which applied to Section 73, cannot be extended to Section 74A. Hence, only Section 74A will apply until CBIC issues further clarification.

3

Legal Provisions:-

- As per **section 74A(11)** of CGST Act,2017, if self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of such tax, then penalty **u/s 74A(5)(i)** equivalent to 10% of tax due or ₹ 10,000, whichever is higher, is payable.
- Thus, option **u/s 74A(8)(i)** to pay tax before issuance of show cause notice to avoid penalty is **not available** in such cases.

Discussion & Conclusion:-

- The due date for payment of tax collected on 18th April is 20th May.
- However, since tax is actually paid on 26th June, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [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:-

  Interest payable = ₹15,50,000 × 18% p.a. × 37/365 **= ₹28,282 (rounded off).**
- **Penalty is mandatorily payable by Inoba Bhave u/s 74A(11) read with section 74A(5)(i) which is equivalent to the higher of the following:-**
  - ₹1,55,000 which is 10% of tax ₹15,50,000 or
  - ₹10,000.
- Therefore, **the penalty of ₹1,55,000 & interest of ₹28,282 (as calculated in case 1 above)** will have to be paid by Inoba Bhave.

4

S.No.	Date on which credit was taken wrongly	Amount of ITC taken wrongly (₹ in lakh)	Tax & penalty u/s 74A(9)
1	31st January, 2025	200	Adjudication order is passed on 26th July, 2027 & payment is made on 20.10.2027 i.e., **after 60 days** of the communication of the adjudication order. Therefore, entire amount of ITC wrongly availed which is ₹ 200 lakh & equal amount of penalty i.e., ₹ 200 lakh shall be payable.

2	30th June 2025	250	Adjudication order is passed on 26th August, 2027 and payment is made on 20.10.2027 i.e., **within 60 days** 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, 2025	120	Show cause notice is issued on 5th September 2027 and payment is made on 20.10.2027 i.e., **within 60 days** of issue of show cause notice. Therefore, entire amount of ITC wrongly availed which is ₹120 lakh and 25% of the penalty imposed i.e., ₹ 30 lakh shall be payable
4	30th January, 2026	50	**Alternative-I:** It is assumed that payment has been made within 60 days of issue of show cause notice. Entire amount of ITC wrongly availed which is ₹ 50 lakh and 25% of the penalty imposed i.e., ₹12.5 lakh shall be payable. **Alternative-II:** It is assumed that show cause notice has not yet been issued. Payment made on 20.10.2027 is before issuance of show cause notice. Therefore, amount of ITC admitted to be taken wrongfully which is ₹ 50 lakh and penalty equal to 15% of such ITC i.e., ₹7.5 lakh shall be payable.

5

➲ 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. **(explanation to Section 74A)**

➲ The question can be answered based on two assumptions — the ₹12 lakh suppression may refer to either the value of supply or the tax amount.

Alternative 1:- ₹12 lakh is assumed to be the value of suppression and tax rate is assumed to be 18%. (Note-1)

Tax, interest and penalty payable before the issue of the SCN:-

In case of short payment of tax by reason of suppression of facts, if taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Value suppressed = ₹12,00,000

Tax @ 18% = ₹2,16,000

Interest (Assumption 1) = ₹2,16,000 × 18% × 90/365 = ₹9,587 (rounded off)

[From 21st January to 20th April] **(Note-2) or**

Interest (Assumption 2) = ₹2,16,000 × 18% × 59/365 = ₹6,285 (rounded off)

[From 21st February to 20th April] **(Note-3)**

Penalty = ₹2,16,000 × 15% = ₹32,400

Tax, interest and penalty payable after the adjudication order:- In case of short payment of tax by reason of suppression of facts, if taxpayer pays short-paid tax & applicable interest after 60 days of communication of adjudication order, penalty equal to 100% of such tax is payable.

Value suppressed = ₹2,00,000

Tax @ 18% = ₹36,000

Interest (Assumption 1) = ₹36,000 × 18% × 188/365 = ₹3,338 (rounded off)

[From 21st January to 27th July] **(Note-2)** or
Interest (Assumption 2) = ₹36,000 × 18% × 157/365 = ₹2,787 (rounded off)
[From 21st February to 27th July] **(Note-3)**
Penalty = ₹36,000 x 100% = ₹36,000

Alternative 2:- ₹12 lakh is assumed to be the suppressed amount of tax.
Tax, interest and penalty payable before the issue of the SCN:- In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.
Tax payable = ₹12,00,000
Interest (Assumption 1) = ₹12,00,000 × 18% × 90/365 = ₹53,260 (rounded off)
[From 21st January to 20th April] **(Note-2)** or
Interest (Assumption 2) = ₹12,00,000 × 18% × 59/365 = ₹34,915 (rounded off)
[From 21st February to 20th April] **(Note-3)**
Penalty = ₹12,00,000 × 15% = ₹1,80,000
Tax, interest and penalty payable after the adjudication order:-
In case of short payment of tax by reason of suppression of facts, if taxpayer pays such short-paid tax and applicable interest after 60 days of communication of adjudication order, penalty equal to 100% of such tax is payable.
Tax payable = ₹2,00,000
Interest (Assumption 1) = ₹2,00,000 × 18% × 188/365 = ₹18,542 (rounded off)
[From 21st January to 27th July] **(Note-2)** or
Interest (Assumption 2) = ₹2,00,000 × 18% × 157/365 = ₹15,485 (rounded off)
[From 21st February to 27th July] **(Note-3)**
Penalty = ₹2,00,000 x 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.

6

As per **Sec 76** , if Subharti Enterprises collects any amount from another person as representing tax under GST, it must mandatorily **pay that amount to the Government, whether or not the supply is taxable.**

- If such amount is not paid, the **proper officer may issue SCN for non payment of amount** & penalty equal to the amount.
- After considering the reply, the **officer shall determine the amount due and require payment** along with interest.
- The order must be passed **within 1 year from the date of SCN** (excluding stay period) and must state the facts and reasoning clearly.

7

1.

- Only the tax amount demanded shall be considered for determining the proper officer u/s 74A.
- Penalty amount is to be **ignored** while deciding jurisdiction under section 74A.
- Where multiple tax periods are involved, **the highest tax amount** for any one tax period shall be considered.
- Where both CGST and IGST are involved, the **combined tax amount** shall be taken.
- Thus, highest combined tax for a single tax period is May 2025 i.e CGST ₹12 lakh + IGST ₹18 lakh = **₹30 lakh**

2. ➲ As the combined tax amount is ₹ 30 lakh , so the PO is determined as follows:

Officer	Combined CGST + IGST limit
Superintendent of Central Tax	Up to ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 20 lakh up to ₹ 2 crore
Additional or Joint Commissioner of Central Tax	Above ₹ 2 crore

➲ Since ₹ 30 lakh is above ₹ 20 lakh but below ₹ 2 crore,

➲ Thus, **Deputy or Assistant Commissioner of Central Tax** is the proper officer.

3. ➲ The Circular clarifies that **monetary limits are applicable even for SCNs issued u/s 122** of the CGST Act, 2017.

➲ Where a SCN u/s 122 involves **penalty relating to both CGST and IGST,** the proper officer shall be determined on the basis of the **combined amount of penalty,** irrespective of individual components

Question 2

Always Right Private Limited is engaged in supply of taxable goods and is registered in the State of Orissa. In the month of March, 2024, 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 74A 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, 2024, 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, 2024 instead of paying IGST.

5. Assume that appeal was preferred by Always Right Private Limited against the notice issued u/s 74A(1) involving suppression of facts to evade tax against which appeal was preferred by the Assessee. Appellate Authority concluded that the penalty u/s 74A(5)(ii) is not sustainable for the reason that the suppression of facts to evade tax has not been established. Now the officer wishes to determine the penalty u/s 74A(5)(i).

Is the action of the officer valid?

What would be the time period for re-determination of the tax, interest and penalty payable by the noticee u/s 74A(1) in such cases?

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:-

1	The **action** of the Department to initiate the recovery proceedings without adjudication order being passed is **not valid.** **Legal Provisions:-** As per **Sec 78** , if a taxable person fails to pay any amount due under an order within 3 months from the date of service of such order (or a shorter period if specified by the proper officer), then recovery proceedings can be initiated under GST law. **Discussion & Conclusion:-** ➲ In given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer. ➲ Thus, the **adjudication order has not yet been passed** in the given case. ➲ Hence, the **action** of the Department **is invalid.**
2	**Legal Provision:-** A s per **Sec 79** , if a person fails to pay tax dues, the proper officer may recover the amount through any of the following methods: a) **Deduction from** amounts payable by tax authorities to the defaulter. b) **Detention and sale of goods** belonging to the defaulter. c) **Recovery from third parties** who owe or may owe money to the defaulter. d) **Attachment** and sale of movable or immovable property. If not paid within 30 days, the property is sold to recover dues and costs. e) **Through the District Collector,** as if it were an arrear of land revenue. f) **Application to Magistrate**, who recovers it as if it were a fine. g) **Enforcement of bonds**/instruments executed under GST. h) **Cross-recovery:** CGST dues can be recovered as SGST arrears and vice versa.
3	**Legal Provision:-** If a person, after any amount becomes due, transfers or creates a charge on their property (by sale, mortgage, exchange, etc.) with intent to defraud Government revenue, such transfer shall be void against tax claims. However, the transfer will not be void if it is: ➲ Made for adequate consideration, ➲ In good faith, ➲ Without knowledge of pending proceedings or dues, or ➲ Made with prior permission of the proper officer.**(Sec 81)** **Discussion & Conclusion:-** ➲ In given case, **transfer** of property by Always Right Private Limited to its director is **void.** ➲ 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.
4	**Legal Provision:-** ➲ If a registered person pays CGST & SGST/UTGST treating a supply as intra-State, but it is later held to be inter-State, they are entitled to a refund of the tax so paid. **(Sec 77)** ➲ Also, in such a case, the person shall not be liable to pay interest on the IGST payable on that transaction. **(Sec 19(2) of the IGST Act)** **Discussion & Conclusion:-** ➲ In the given case, **Always Right Private Limited shall be refunded** the amount of taxes so paid and it shall

	not be required to pay any interest on the amount of IGST payable by it on the transaction wrongly considered by it earlier as intra-State transaction. ➲ The IGST liability **cannot be adjusted** against the CGST and SGST wrongly paid.
5	**Valid.** ➲ As per **section 75(2A)** of CGST Act, 2017, if the Appellate Authority concludes that the **penalty u/s 74A(5)(ii) is not sustainable** for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom **the notice was issued, the penalty shall be payable by such person, u/s 74A(5)(i).** ➲ As per **section 75(3)** of CGST Act, proper officer is required to issue order of redetermination of tax, interest & penalty payable within the time limit as specified in u/s 75(3), i.e. **within 2 years** from the date of communication of said direction by appellate authority.
6	➲ **Incorrect.** As per **section 75** 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. ➲ However, the interest demanded in the order shall not exceed amount specified in the notice.
7	**(i) Advice After Issue of Order:** ➲ The amount of tax, interest, and penalty stated in the order cannot exceed the amount specified in the SCN **(Sec 75(7))** ➲ In this case, since the demand in the order exceeds the SCN, Always Right Private Limited has valid grounds to file an appeal against the adjudication order within the prescribed time. **(ii) Advice After Issue of Corrigendum:** The issuing authority may rectify any error apparent on the face of the record within 6 months, except for clerical or arithmetical errors, which can be corrected without any time limit. **(Sec 161)** ➲ Here, the corrigendum rectifies a typographical (clerical) error in the SCN, which qualifies as an error apparent on the face of the record. ➲ **Hence, the rectification is valid, and the 6-month limit does not apply.** **Conclusion:** Always Right Private Limited should respond to the revised SCN considering the corrected demand amount.

19 LIABILITY TO PAY IN CERTAIN CASES

Question 1

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 us 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:-** ➲ 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. 2) **Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:-** ➲ 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. ➲ 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. ➲ 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.
2)	**Legal Provision:-** ➲ As per **section 85** 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, ➢ **the taxable person and person to whom the business is transferred shall, jointly and severally, be liable** wholly or to the extent of such transfer, ➢ to pay tax, interest or any penalty due from the taxable person **upto the time of such transfer.**

	➢ whether such tax, interest or penalty has been determined **before such transfer, but has remained unpaid or is determined thereafter.** **Discussion & Conclusion:-** ➲ 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] **due from** Suresh **only upto the time of such transfer.**
3)	**Legal Provision:-** ➲ As per **section 86** of CGST Act, if an agent supplies or receives any taxable goods on behalf of his principal, such **agent and his principal shall, jointly and severally,** be liable to pay the tax payable on such goods under GST. **Discussion & Conclusion:-** ➲ In given case, Raghav & Sons (an agent) sells goods to Swami Associates on behalf of M/s V'Smart & Co. (Principal) & thus, V'Smart & Co. and Raghav & Sons shall, **jointly and severally, be liable** to pay GST payable on such goods.
4)	**Liability to pay tax & other dues for Mukesh:-** **Legal Provision:-** ➲ As per **section 89** of CGST Act, 2017, notwithstanding anything contained in Companies Act, 2013, if **any tax, interest or penalty due from** a private company for any supply of goods or services or both for any period **cannot be recovered,** then, ➢ every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty. ➲ 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. **Discussion & Conclusion:-** ➲ In given case, since Mukesh was the director of Dullness Pvt. Ltd. during preceding financial year for which the demand is raised, **he shall, jointly and severally, be liable** 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. **Liability to pay tax & other dues for companies in case of merger:-** ➲ As per **section 87** of CGST Act, when **two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise** and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then ➢ **such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.** ➲ 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. ➲ Their registration certificates shall be cancelled with effect from the date of the said order.
5)	**Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016**, if a person, liable to pay tax, interest or penalty under CGST Act, **dies,** then:- **(a) Business is continued after his death:-** ➲ 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. **(b) Business is discontinued after his death:-** ➲ 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.
6)	(i) As per **section 92** of CGST Act, if **estate of a taxable person** owning a business for which any tax, interest or penalty is payable under GST **is under the control of** Court of Wards/ Administrator General/ Official Trustee/ Receiver or Manager appointed by or under any order of a Court, the **tax, interest or penalty shall be levied upon and recoverable from** such Court of Wards/ Administrator General/ Official Trustee/ Receiver or Manager. (ii) **Yes,** as per **section 91** of CGST Act, the **guardian, trustee, or agent** who is carrying on business on behalf of and for benefit of a minor or other incapacitated person **is liable** to pay tax dues, etc. in respect of such business. (iii) As per **section 89(2)** 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 **shall not be liable for those unrecovered dues such company.** However, **he shall be liable for any personal penalty** imposed on him. (iv) As per **section 88** of CGST Act, **Commissioner shall notify the liquidator an amount** 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. But, if any **private company is wound up, then every person who was a director** of such company at any time during the period for which the tax was due from such company shall, **jointly and severally,** be liable for the payment of such tax, interest or penalty.

20 OFFENCES & PENALTIES

Question 1

A) 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 @ 40% on said goods from the buyer. However, the actual rate of tax appliable 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. Assume that the compounding amount fixed by commissioner is according to the notified criteria.

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.

B) Suppose Mr. Raman is a manufacturer of textiles and has recently installed five new dyeing machines in his factory in Gujarat which were purchased locally. As per a special procedure notified u/s 148 of CGST Act, Mr Raman was required to register these machines by October 31, 20XX. However, due to an oversight, he failed to register two of these machines by the due date. On November 10, 20XX, a GST officer conducted an inspection and issued a penalty order u/s 122A & communicated the same. What will be the consequences for Mr. Raman under the GST law, and how can he avoid confiscation of the machines?

Answer :- A]

1 **Legal Provision:-**As per **Sec 122(1)** ,a taxable person shall be liable to a penalty, if they:

a) Make a supply without issuing an invoice,

b) Issue an invoice without actual supply,

c) Avail or utilise ITC without actual receipt of goods/services,

d) Collect tax but fail to pay it to the Government within 3 months.

Penalty: Higher of ₹10,000, or Tax evaded / ITC wrongly availed or passed on.

➲ Any person who causes or instigates such offences is also liable to penalty equal to the ITC availed or passed on. **(Sec 122(1A))**

➲ Any person who aids or abets the above offences is liable to a **penalty up to ₹25,000. (Sec 122(3))**

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 penalty u/s 122(3) which may **extend to ₹25,000.** ➲ Further, as per **section 132, imprisonment** would be as follows:- **(i) In case of first-time offence, if:-** (a) tax evaded > ₹5 crore, imprisonment upto 5 years & fine, (b) tax evaded exceeds ₹2 crore but > ₹5 crore, imprisonment upto 3 years & fine, (c) tax evaded exceeds ₹1 crore but < ₹2 crore in case of issue of invoice/bill without supply leading to wrongful availment/utilisation of ITC or tax refund, imprisonment upto 1 years & fine. **(ii) In case of subsequent offence:-** Imprisonment would be (without limit of amount of tax involved) up to 5 years & fine. **Penalty in case of transaction between Raman & M/s Runaway Traders:-** ➲ In given case, Raman issued invoice without supply of goods and M/s Runaway Traders utilised the ITC on the same. Thus, **both are liable to pay a penalty of ₹25 lakhs each.** ➲ Also, the **tax consultant will be liable to pay a penalty of ₹25 lakhs** since the transaction was conducted at his instance. **Penalty in case of transaction between Raman & Suraksha Enterprises:-** ➲ In given case, Raman collected tax at wrong rate (i.e. 40%), **but fails to deposit full tax collected** to Government i.e. he deposits only tax @ 18% thereby retaining the remaining tax collected. ➲ Thus, the **penalty that can be imposed on Raman is ₹1,10,000** which is **higher of** the following:- a) ₹10,000 or b) Tax evaded ₹1,10,000 i.e. [(₹5,00,000 × 40%) - (₹5,00,000 × 18%)].
2	**Legal Provision:-** ➲ If any person to whom a summon is issued for appearance to give evidence or produce a document in an inquiry **fails to appear** before the officer of central tax, then he shall be liable to a **penalty** which **may extend to ₹25,000. [Sec 122 (3)]** **Discussion & Conclusion:-** ➲ In given case, if Raman fails to appear before the central tax officer, then a **penalty upto ₹ 25,000** can be imposed on him.
3	**Legal Provision :** As per **Sec 126** the levy of penalty must follow a disciplinary framework rooted in principles of natural justice and jurisprudence. Accordingly: ➲ No penalty can be imposed without issuance of a SCN and providing the opportunity of being heard. ➲ The penalty must be proportionate to the facts and severity of the breach. ➲ The nature of the breach must be clearly stated in the penalty order. ➲ The specific legal provision under which the penalty is imposed must also be mentioned. **Discussion & Conclusion:-** In the given case, since SCN to be issued to Mr. Raman suffers from **lack of clarity about nature of breach** which has taken place and about **provision of law** under which penalty is to be imposed, **SCN issued by department may be challenged.**
4	**Legal Provision:-**As per **Sec 138 , a person accused of an offence may apply for compounding,** even after prosecution has been initiated. ➲ **Minimum** compounding amount**: 25%** of the tax involved ➲ **Maximum** compounding amount: **100%** of the tax involved **Once the compounding amount is paid as determined by the Commissioner:** ➲ **No further proceedings** shall be initiated under GST for the same offence, and ➲ **Any ongoing criminal proceedings shall stand abated.** **Discussion & Conclusion:-** (i) In given case, **Mr. Raman can apply for compounding** of offence even though prosecution has been instituted or launched against him. (ii) The minimum limit for compounding is **₹ 1.05 crores** i.e. (25% x ₹ 4.2 crores) and the maximum limit for compounding is **₹ 4.2 crores** i.e. (100% x ₹ 4.2 crores).

(iii) Thus, amount fixed by Commissioner at **₹2.5 crores is within limits** prescribed under law.
(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.

5

Legal Provision:-

➲ As per **Sec 129(1)**, the **penalty for release of detained/seized goods is:**

➲ **For Taxable Goods:**

a) If owner comes forward – 200% of tax payable
b) If owner does not comes forward – Higher of 50% of value of goods or 200% of tax payable

➲ **For Exempted Goods:**

a) **If owner comes forward** – Lesser of **2%** of value or **₹25,000**
b) **If owner does not come forward** – Lesser of **5%** of value or **₹25,000**

➲ As per first proviso to **Section 129(6)**, the transporter may get the **conveyance released** on payment of **penalty as per order or ₹1 lakh, whichever is lower.**

Discussion & Conclusion:-

(i) Penalty where owner of goods does not come forward for payment of penalty:-

➢ In given case, if Raman failed to come forward for the **payment of penalty, the penalty payable under the CGST Act is ₹3,40,000** which is **higher** 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.

➢ Further, the transporter of goods can get its **truck released upon payment of ₹1,00,000** 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.

➢ If goods are exempted from GST, then the **amount payable for release of goods detained shall be ₹ 25,000** which is the **lesser** of:-
☛ 5% X ₹6,80,000 = ₹34,000 or ₹25,000.

(ii) Penalty where owner of goods comes forward for payment of penalty:-

➢ If Raman comes forward for the payment of penalty, the **penalty payable under CGST Act is ₹1,22,400** which is 200% of tax payable on such goods i.e. (200% of ₹6,80,000 × 9%).

➢ Further, the transporter of goods can get its **truck released upon payment of ₹1,00,000** 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.

➢ If goods are exempted from GST, then the **amount payable for release of goods detained shall be ₹ 13,600** which is the **lesser** of:-
☛ 2% X ₹6,80,000 = ₹13,600 **or** ₹25,000.

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:-** ➲ No penalty shall be imposed for minor breaches or easily rectifiable mistakes in documentation, if made without fraudulent intent or gross negligence. ➲ A breach is considered minor if the tax involved is less than **₹5,000.** ➲ Voluntary disclosure of a breach before detection by the officer may be treated as a mitigating factor while determining penalty. ➲ No penalty can be imposed without giving an opportunity of being heard. **(As per Sec 126)** ➲ As per **Sec 125,** for any contravention without a specific penalty, a general penalty up to **₹25,000** may be imposed. **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.

B] Since Mr. Raman failed to register 2 machines under special procedure notified u/s 148, following consequences will apply:

1.	**Penalty for Non-Registration:**	Mr Raman will be liable to pay a penalty of ₹ 2 lakhs each under CGST & SGST for 2 unregistered machines & thus, **total penalty under CGST and SGST = ₹4 lakhs.**
2.	**Additional Penalties:**	This penalty **will be in addition** to any other penalties payable under demand & recovery or any other provisions applicable under GST law.
3.	**Seizure & Confiscation:**	The 2 unregistered machines will be seized and liable for confiscation.
4.	**Avoiding Confiscation:**	**Mr. Raman can avoid the confiscation of machines by:** a) Paying penalty of ₹4 lakh (₹2 lakh for each machine under CGST & SGST) & b) Registering 2 unregistered machines as per special procedure within 3 days from the receipt of communication of penalty order (November 10, 20XX).

Question 2

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.

(iii) 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 **Legal Provision** : All offences **u/s 132 are generally non-cognizable** and **bailable**, **except** the following cognizable and non-bailable offences where the amount involved exceeds **₹ 5 crores:**

a) **Supply without invoice** to evade tax
b) **Issuing invoice without supply**, leading to wrongful ITC/refund
c) **Availing ITC fraudulently,** with or without invoice
d) **Collecting tax** but not paying it to the Government **within 3 months**

In case of a cognizable offence, the arresting officer must:
➤ Inform the person of the grounds of arrest, and
➤ Produce the person before a Magistrate within 24 hours.

2

Person	Offence	Prosecution	Arrest	Bail
'Ashuram'	Non-cognizable offence [Sec 132(1)(c) read with sec 132(4)]	No prosecution (prosecution is given only if wrongly availed ITC is more than ₹ 200 lakhs)	No arrest [Sec 69(1)]	Bailable Offence [Sec 132(4)]
'Bahubali'	Non-cognizable offence [Sec 132(1)(e) read with sec 132(4)]	Upto 5 years [Sec 132(1)(e)(i)] but, minimum 6 months	No arrest [Sec 69(1)]	Bailable Offence [Sec 132(4)]
'Chintamani'	Non-cognizable offence [Sec 132(1)(f) read with sec 132(4)]	Upto 6 months [sec 132(1)(f)(iv)]	No arrest [Sec 69(1)]	Bailable Offence [Sec 132(4)]
'Deendayal'	Cognizable offence [Sec 132(1)(d) read with sec 132(5)]	Upto 5 year [Sec 132(1)(d)(i)] but, minimum 6 months	Arrest can be ordered by Commissioner without arrest warrant [Sec 69(1)]	Non-Bailable [Sec 132(5)]

Author's note:- In case of Chintamani, ICAI RTP has given prosecution "Upto 3 years [Section 132(1)(f)(ii)]" but as per the author, the correct prosecution is "Upto 6 months [section 132(1)(f)(iv)]". Thus, the ans given by ICAI may be wrong.

3 (i) **Case of Homi Gabha**

➤ Failure to pay collected tax within 3 months is punishable only if the amount exceeds ₹ 200 lakh **(132(1)(d)(ii))** .
➤ Homi Gabha failed to deposit ₹90 lakh (₹ 240 lakh collected – ₹ 150 lakh paid), which is below ₹ 200 lakh, so no imprisonment under this clause.
➤ However, **falsification of financial records is punishable with imprisonment up to 6 months**, or fine, or both. (Sec 132(4))

(ii) **Case of Datukeshwar Dutt:**

- If tax collected but not paid exceeds ₹500 lakh, it is punishable with imprisonment up to 5 years and fine. **(Sec 132(1)(d)(i))**
- Tax evaded: ₹630 lakh – ₹120 lakh = **₹510 lakh**, so this is applicable.
- Minimum **imprisonment is 6 months**, unless the court records special and adequate reasons for a lesser term. **(Sec 132(3))**
- The **offence is non-bailable. (Sec 132(5))**

(iii) **Repeat Offence (Both Persons):**

If Homi Gabha or Datukeshwar Dutt repeat the offence, they are punishable with:

- Imprisonment up to 5 years,
- Minimum 6 months, and
- Fine,
- unless special and adequate reasons are recorded by the court. **(Sec 132(2))**

21 APPEAL & REVISION

Question 1

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.
3	In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner. Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal.

4	**Prateek Ltd. filed an appeal in the High Court to decide if its activity amounts to supply under GST. The court ruled in favour of Prateek Ltd., with a tax demand of ₹1.2 crore IGST, ₹60 lakh interest, and ₹50 lakh penalty. The Department disagrees and wants to appeal before the Supreme Court relating to the dispute pertaining to the demand of tax, interest and penalty. You are required to examine whether an appeal can be filed by the Department in the given case. Will your answer change, in case matter is related to valuation of services instead of determining whether the said activity amounts to supply?**
5	**M/s Nova Traders, a registered person under GST, received an order from the Adjudicating Authority demanding the following:** **a) Disputed CGST: ₹ 8 crore** **b) Disputed IGST: ₹ 5 crore** **c) Penalty (u/s 122): ₹ 2 crore** **d) No part of tax, interest or penalty is admitted by the assessee.** **Aggrieved by the order, Nova Traders filed an appeal before the Appellate Authority (AA) after making the required pre-deposit. The Appellate Authority passed an order partly confirming the demand.** **Still aggrieved, Nova Traders now proposes to file an appeal before the Appellate Tribunal.** **Separately, in another case, Nova Traders received an order imposing only penalty of ₹ 60 lakh, without any tax demand, and wishes to file an appeal against the said order.** **Based on the above facts, answer the following:** **1. What is the amount of pre-deposit required to be paid for filing appeal before the Appellate Authority under section 107(6)?** **2. What additional amount is required to be paid for filing appeal before the Appellate Tribunal under section 112(8)?** **3. What is the pre-deposit requirement in case of an order demanding only penalty?**

Answer :-

1	i)	As per **section 121** of CGST Act, 2017, **no appeal** shall lie against any decision taken or order passed by a CGST officer, if it relates to any of the following matters:- a) An order of Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer, b) An order pertaining to seizure or retention of books of account, register & other documents, c) An order sanctioning prosecution under the CGST Act or d) An order passed under section 80 of CGST Act (payment of tax & other amounts in instalments).
	ii)	**Legal Provision:-** ➲ As per **section 107** of CGST Act, 2017, a person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority **within 3 months** from the date of communication of such decision/order. ➲ The Appellate Authority can **condone** the delay in filing of appeal **by 1 month** if it is satisfied that there was a sufficient cause for such delay. **Discussion & Conclusion:-** ➲ In given case, relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) & not 23rd April. ➲ Accordingly, an appeal can be filed by Anirudh Ltd. to Appellate Authority **within 3 months** from the date of communication of order (28th April), **i.e. 28th July.** ➲ Thus, Anirudh Ltd. **has filed the appeal within the time limit** prescribed under GST law.

	iii)	**Legal Provision:-** ➲ As per **Section 107** of CGST Act, 2017, by an order, Commissioner may direct any officer subordinate to him to apply to Appellate Authority **within 6 months** from the date of communication of said decision/order to determine specified points arising out of it. ➲ The Appellate Authority can **condone** the delay in filing of appeal **by 1 month** if it is satisfied that there was sufficient cause for such delay **Discussion & Conclusion:-** ➲ In present case, Commissioner directs his subordinate officer to file a review application with the Appellate Authority which should have been filed **till 3rd September** (i.e. within 6 months from the date of communication of order). ➲ But subordinate officer filed application on **23rd September, i.e. after 3rd September.** ➲ Thus, **appeal has not been filed within the time limit prescribed** under the GST law. ➲ However, Appellate Authority **can condone** delay in filing of appeal **upto 3rd October** (i.e. up to 1 month) if it is satisfied that there was sufficient cause for such delay.
	iv)	**Yes,** as per **section 112** of CGST Act, Anirudh Ltd. **can file** an appeal against the order of the first Appellate Authority to the Appellate Tribunal. **Principal Bench of the Tribunal** will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.
	v)	➲ The statement is **partially correct.** ➲ As per **section 112** of CGST Act, though Appellate Tribunal does **have power to refuse** to admit appeal, It can refuse to admit appeal where- a. the tax or input tax credit involved or b. the difference in tax or the difference in input tax credit involved or c. the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000.
	vi)	**No,** as per **section 112** of CGST Act, Authority **can't insist**, because once a valid appeal is filed i.e., on payment of requisite pre-deposit, the **recovery proceedings for the balance** amount of the demand in dispute **gets stayed** till the disposal of appeal.
	vii)	**Yes,** as per **section 118** of CGST Act, Anirudh Ltd. **can file another appeal** directly before the **Supreme Court** against the decision of the **Principal Bench** of the Tribunal.
	viii)	**No,** there will be no **interest liability** on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction 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 & SGST payable because **there is no shortfall of overall tax amount.**
2		**Legal Provision:-** ➲ As per **section 108** 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. ➲ 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. **Discussion & Conclusion:-** ➲ Commissioner wants to revise the order on the point which **is the subject matter in the appeal.** ➲ Therefore, the Commissioner **cannot exercise the power of revision** in respect of such order & thus, the action taken by the Commissioner is **not correct.**
3		**Legal Provision:-** ➲ As per **section 107(6) of CGST Act** read with **section 20 of IGST Act**, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:- a) **full admitted liability** of tax, interest, fine, fee & penalty arising from impugned order & b) **10% of disputed tax** arising from said order, subject to **maximum of ₹ 20 crores each (i.e ₹40 Crores** in case of IGST). ➲ As per **section 112(8) of CGST Act read with section 20 of IGST Act**, no appeal shall

be filed before the Appellate Tribunal (AT), unless the appellant has paid:-

a) **full admitted liability** of tax, interest, fine, fee & penalty arising from impugned order &

b) **10% of disputed tax** arising from said order, **in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a **maximum of ₹20 Crores each (i.e. ₹40 Crores** in case of IGST).

Discussion & Conclusion:-

(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 **₹28 crore** which is **lesser** of following:-

a) ₹28 crore i.e. [10% of tax ₹280 crore in dispute] or

b) ₹40 crore.

(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 ₹28 crores which is **lesser** of following:-

a) ₹28 crores i.e. [10% of tax ₹280 crores in dispute] or

b) ₹40 crores.

Note: Similar question is given in **[CA final RTP Nov 19]** with changes in Question & answer as under:

1. **CGST in dispute ₹280 crore** is given instead of IGST ₹280 crore.
2. Maximum limit of pre-deposit u/s 107(6) & u/s 112(8) shall be **₹20 crore & ₹20 crore, respectively.**
3. The final answers for pre-deposits shall change accordingly as per amended provisions.

4

➲ **Under Section 120** of the CGST Act, the CBIC has set monetary limits for filing appeals by the Department i.e **GSTAT: ₹20 lakhs, High Court: ₹1 crore & Supreme Court: ₹2 crore**

➲ In the given case, the amount in dispute (₹1.2 crore tax) is below the ₹2 crore limit for the Supreme Court. Therefore, an appeal **cannot be filed** based on the monetary limit.

➲ However, the Department can still file an appeal to the Supreme Court if the case involves issues like:

- ➤ Valuation of services
- ➤ Ultra vires provisions or rules
- ➤ Recurring issues in GST interpretation
- ➤ Strictures or adverse comments against the Department

➲ Thus, if the case is related to valuation of services, the Department **can appeal** to the Supreme Court based on the merits, regardless of the monetary limit.

5.

1.

➲ **Pre-deposit for appeal before Appellate Authority:** As per section 107(6), an appeal shall be filed only after payment of:

➤ Full amount of tax, interest, fine, fee and penalty **admitted** by the appellant (Nil in this case), and

➤ **10% of the disputed tax,** subject to a maximum of **₹20 crore for CGST and ₹40 crore for IGST.**

➲ Thus, Amount of pre-deposit will be

- ➤ CGST: 10% of ₹8 crore = ₹0.8 crore
- ➤ IGST: 10% of ₹5 crore = ₹0.5 crore

➲ Since both are within the prescribed limits, total pre-deposit = **₹1.3 crore.**

2.

➲ **Additional pre-deposit for appeal before Appellate Tribunal:** As per section 112(8), the appellant shall pay:

➤ Full amount admitted (Nil), and

➤ **10% of the disputed tax, in addition to** the amount deposited under section 107(6),

		subject to a maximum of **₹20 crore for CGST and ₹40 crore for IGST.** ➲ Thus, Additional deposit required: ➤ CGST: 10% of ₹8 crore = ₹0.8 crore ➤ IGST: 10% of ₹5 crore = ₹0.5 crore ➲ Total additional pre-deposit = **₹1.3 crore.**
	3.	➲ **Pre-deposit where order demands only penalty:** As per section 107(6) and section 112(8), where an order demands **penalty without involving any tax demand,** no appeal shall be filed unless the appellant pays **10% of the penalty amount.** ➲ In the given case: ➤ Penalty imposed = ₹60 lakh ➤ Pre-deposit required = 10% of ₹60 lakh = **₹6 lakh.**

22 MISCELLANEOUS PROVISION

Question 1

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 ACT 1962

IMPORTANT QUESTIONS

01 Valuation

Question 1 **(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 transshipped 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
FAS	**21,000**
Handling charges at the port in the country of the exporter [Note 1]	100
FOB	**21,100**
Add: Adjustments under rule 10(1)	
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	Nil
Adjusted FOB value	**26,100.00**
Add: Adjustments under rule 10(2)	
Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	Nil
CIF value	**28,393.63**
Add: Unloading and handling charges paid at the place of importation [Note 6]	Nil
Assessable value	**28,393.63**
Assessable value in Indian rupees @ ₹ 60/ per $	**₹ 17,03,617.80**
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 2

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.	**Bill of entry**	Date 21.01.2018 Exchange rate on that day a) Notified by CBIC 1 UK - ₹ 101 b) Prescribed by RBI UK = ₹ 100
II.	**Entry inward**	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 theimported 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.

Question 3

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

Bill of Entry presented on 10-11-20XX, and the rate of exchange notified by CBEC on this date was ₹ 66.25 per US $ and rate of BCD was 7.5%.

Date of arrival of aircraft was 06-11-20XX and rate of exchange notified by CBEC on this date was ₹ 66.50 per US $ and rate of BCD was 7.5%. Exchange rate on the date of filing of bill of entry (04.11.20XX) is 66.25per US $.

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
Add: Adjustment under rule 10(1)	
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
Add: Adjustment under Rule 10(2)	
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-4]**	
Assessable value in rupees	**50,15,332**

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)

02 BAGGAGE

Questio 1

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 ₹ 80000
B) Travel Souvenir ₹ 12000
C) Laptop worth ₹ 50000
D) 2 music system worth ₹ 50000
E) 2 Litre wine worth ₹ 10000
F) Mobile ₹ 20000
G) Digital camera ₹ 40000
H) Sound system worth ₹ 50000
I) 120 sticks of cigarettes of ₹ 100 each value ₹ 12000
J) Fire arm with 100 cartridges (Value includes value of cartridges at @ ₹ 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 ₹80000
B) Travel Souvenir ₹ 6000
C) Jewellery bougt ₹ 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 Duty-free allowances (₹)	Mrs. A Duty-free allowances (₹)
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	
9. Firm arm cartridge (50 cartridges can be accommodated in GFA) (50*₹500)	25,000	
Total	**2,05,000**	**99,000**
Duty Free Limit	50000	50000
Baggage on which duty is payable	155000	49,000
Duty Rate	35%	35%
Custom Duty Payable	**54,250**	**17,150**

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

2. Firearms & cartridges of firearms exceeding 50 are chargeable @ 70% applicable to baggage (Heading 9803). Thus, duty payable on these = [(₹1,00,000 total - (100 cartridges * ₹500 per cartridge)) + (50 cartridges * ₹500 per cartridge)] * 70% = ₹50,000 + ₹25,000) * 70% = ₹52,500. Cigarettes exceeding 100 sticks are chargeable at the respective tariff rates.

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 ₹50,000 as general duty free baggage allowance as per Rule 3.

2) GFA limit will be ₹15,000 in case Mr.A is foreign origin and has come to India to travel.

In such case,

Duty payable by Mr.A = [(₹ 2,05,000-₹ 15,000) *35%]

= (₹1,90,000*35%)

= ₹ 66,500

Duty on firearms, cartridges of firearms exceeding 50 & Cigarettes exceeding 100 sticks will be same as discussed in note 2 above.

03 DRAWBACK

Only For CS & CMA Students

Question 1

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:

Particualrs	
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 × 47/365 × 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.

Particualrs	
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 x 123/365 x 15/100] (rounded off)	₹505

Question 2

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
A	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	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.
C	1,20,000	60,000	0.75% of FOB	900	900 [Valid, as amount exceeds ₹ 50]
D	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.]