

# **PRACTICE QUESTIONS**

## **Advanced Tax Laws**

(Relevant for June 2019 examination)

### **Indirect Taxes**

**GST and Customs Law**



**THE INSTITUTE OF  
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# Chapter 1

## An Overview on Goods and Services Tax 'GST'

*Introduction; Constitutional Aspects & Administration; GST models; Levy and collection of CGST and IGST; Composition scheme & Reverse Charge, Exemptions.*

### Question 1

What is Goods and Services Tax (GST) and what exactly is the concept of destination based tax on consumption?

#### Answer:

GST is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Destination based tax on consumption means the tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

### Question 2

State the necessary pre-conditions for levy of GST on goods and services.

#### Answer:

The following conditions are required to be satisfied for a transaction to be chargeable to GST, i.e.-

- a) it involves supply of goods or services or both in terms of Section 7 of the CGST Act, 2017;
- b) the supply is a taxable supply; and
- c) the supply is made by a taxable person.

### Question 3

Which are the commodities which have been kept outside the purview of GST?

#### Answer:

Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So, alcohol for human consumption is kept out of GST by way of definition of GST in the constitution. Further, as per Article 279A (5) of the Constitution, five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST. Additionally, though, electricity has not been explicitly excluded from GST but it is considered as Nil rated in GST and continues to be charged with pre-GST taxes i.e. electricity duty by the State Governments.

### Question 4

ABC Sweets Ltd., registered in Kerala dealing in supply of sweets from its shop in city "X". It has shops (units) in City "Y" and City "Z" in Kerala and City "W" in Tamil Nadu. It

transfers some of its stock from its shop in City “X” to its other units in Kerala(intra-state) and Tamil Nadu(inter-state).Whether such self-supplies are taxable under GST?

**Answer:**

The definition of supply given under section 7 of CGST Act, 2017 is an inclusive one. It does not specify that supply is to be made by one person to another. So, self-supplies are to be treated as supply in terms of section 7 of CGST Act. Further, section 25(5) provides that where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory or in the same state or Union territory provided such establishment is separately registered in GST, then such establishments shall be treated as establishments of distinct persons.

Clause (2) of Schedule I of CGST Act, 2017 inter alia provides that supply of goods & services between distinct persons as specified in section 25 made in the course or furtherance of business is to be treated as supply even if made without consideration.

The legal position is thus crystalized that Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration and Intra-state self-supplies shall also be taxable provided the recipient is separately registered as business vertical.

In view of the above discussed legal position, Inter State transfer of stock made by ABC Sweets Ltd. i.e. to its shop located in City “W” in Tamil Nadu are taxable under GST. Assuming that the shops of ABC Sweets Ltd. Located in City “Y” and City “Z” in Kerala are not separately registered, self-supplies made to such shops are not taxable under GST.

**Question 5**

Discuss whether GST would be payable in following independent cases:

- a) A Company Secretary makes payment of LLP Registration fees of Rs. 3,000/- on behalf of their clients and charges the client his professional fee of Rs. 15,000/- along with expenses of Rs. 3,000/- incurred in form of payment to Registrar of Companies.
- b) A company provides Subsidized Meal facility to employees. It pays Rs. 70/- per plate to the caterer and deducts Rs. 10/- per plate from the employee’s salary.
- c) A pharmaceutical company supplies free samples to doctors.
- d) Raghunath Temple Charitable trust, registered under section 10(23C)(v) of the Income-tax Act gives on rent a community hall, located within temple premises, to public for organizing a Diwali Mela. Rent charged is Rs. 9,500.
- e) Northstar Trucking Ltd. has given on hire 11 trucks to Jaggi Transporters of Mumbai (a goods transport agency) for transporting goods in various parts of the country. The hiring charges for the trucks are Rs. 10,200 per truck per day.

**Answer:**

- a) Rule 33 of the CGST Rules 2017 provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply.

In view of the same, GST is payable only on Rs. 15,000 and not on Rs. 3,000 which were paid by him while acting as a Pure Agent.

- b) As per the decision of AAR in Kerala, as also affirmed by the App. A.A.R., in the matter of M/s. Caltech Polymers Pvt. Ltd., the recovery of subsidized meal facility from the employees is chargeable to GST at market value. The Authority has held that even though there is no profit as claimed by the company on the supply of food to its employees, there is "supply" as provided in Section 7(1)(a) of the GST Act, 2017 and the applicant would definitely come under the definition of "Supplier" as provided in sub-section (105) of Section 2 of the GST Act, 2017.

In view of the above, the company would be liable to pay GST on the subsidized meal provided to its employees.

- c) The answer of the question of taxability of free samples can be given after referring to Section 7 and Schedule I of the CGST Act, 2017.

According to section 7 Supply includes "All forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business; Schedule I specifies activities made or agreed to be made without a consideration and as per that **supply made without consideration to unrelated person will not treated as supply.**

Therefore, GST will not be levied on free samples distributed, because it is not considered as supply. However, ITC on such purchases are not allowed to supplier.

- d) Renting of community hall by Raghunath Temple Charitable Trust is exempt from GST, as rent is less than Rs.10,000 per day. The Exemption Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017 has exempted the said service wholly from GST. The said notification provides exemption to services by a person inter alia by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a trust or an institution under section 10(23C)(v) of the Income-tax Act . However, this exemption does not apply where renting charges of premises, community halls, kalyanmandapam or open area are Rs. 10,000 or more per day.
- e) The Exemption Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017/ Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017 provides exemption to services by way of giving on hire inter alia to a goods transport agency, a means of transportation of goods.

In view of the above, GST is not payable in case of hiring of trucks to Jaggi Transporters.

## Question 6

What is the eligibility category for opting for composition levy? Which are the Special Category States in which the turnover limit for Composition Levy for CGST and SGST purpose shall be Rs. 75 lakh?

### Answer:

Composition scheme is available to such taxpayers whose turnover in the preceding financial year did not cross Rs. One crore. In the case of following 9 states, the limit of turnover to qualify for composition scheme is Rs. 75 Lakhs.

- a) Arunachal Pradesh
- b) Assam
- c) Manipur

- d) Meghalaya
- e) Mizoram
- f) Nagaland
- g) Sikkim
- h) Tripura and
- i) Himachal Pradesh.

**Question 7**

From the following details pertaining to Ashwathama, a registered dealer engaged in purchase and sale of goods, ascertain the GST liability (SGST/CGST/IGST) for the month of September, 2018:

<i>Particulars</i>	<i>Amount (Rs.)</i>
Sale price charged to customers within State (excluding GST)	12,50,000
Commission charged to buyers	12,000
Packing and forwarding expenses incidental to sale	18,000
Weighment charges, shown separately in invoices	9,500

Prompt payment discount, indicated in invoice 1%, if payment made within 1 month. All buyers of goods have availed the discount.

The rates of taxes for the goods supplied are as under :

<i>Particulars</i>	<i>Rate</i>
CGST	9%
SGST	9%
IGST	18%

**Answer:**

Determination of GST Liability of Ashwathama for the month of September, 2018

<i>Particulars</i>	<i>Amount (Rs.)</i>
Sale price charged to customers within State (excluding GST)	12,50,000
Add : Commission charged to buyers [See Note 1]	12,000
Packing and forwarding expenses incidental to sale [See Note 1]	18,000
Weighment charges, shown separately in invoices [See Note 1]	9,500
	12,89,500

Less : Prompt payment discount, indicated in invoice 1% [See Note 2]	12,500
Value of taxable supply	12,77,000
SGST at 9%	1,14,930
CGST at 9%	1,14,930
Total GST Payable (SGST + CGST)	2,29,860

*Notes:*

1. As per Section 15(2)(c) of the CGST Act, 2017, all incidental expenses like commission, packing & forwarding, weightment charges form part of the taxable supply.
2. Prompt payment discount is deductible in the tax invoice, if payment is being made before or at the time of supply. However, if the payment is made post supply, the amount of discount along with tax paid thereon can be adjusted by way of a credit note. Here, it is assumed that all the buyers paid whole of the amount before the supply is made. In the event of buyers making payment post the date of supply but within 1 month, the amount of Rs. 12500/- along with CGST and SGST can be repaid to the customer by way of credit note.
3. It is also assumed that the transaction is an intra-state supply. Hence CGST and SGST has been charged.

### **Question 8**

Balram, a registered supplier, furnishes the following details pertaining to the month of August, 2018 (first month of starting of business):

<i>Particulars</i>	<i>Amount (Rs)</i>
Purchases of goods within the State	8,00,000
Purchases of goods from outside the State	10,00,000
Inter State Sales	6,00,000
Intra State Sales	12,50,000
The rates of taxes for the goods supplied are as under :	
<i>Particulars</i>	<i>Rate</i>
CGST	6%
SGST	6%
IGST	12%

Compute the GST payable by the supplier Balram for the month of August, 2018.

**Answer:**

Section 24 of the CGST Act provides a list of persons who are required to be registered compulsorily irrespective of the threshold limit. The list includes every person making any inter-State taxable supply. In the present case though the turnover of Balram is Rs. 18,50,000/- only in the first month of commencement of business which is less than the threshold limit, yet he would be required to seek registration as he is making inter-state sales of Rs. 6,00,000/-. His tax liability can be calculated as under:

**Computation of GST Liability of Balram for August 2018**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>
Inter-State Sales	600000	72000		
Intra state sales	1250000		75000	75000
Total output tax payable		72000	75000	75000
<b>Input tax credit available</b>				
ITC on Purchases of goods from outside the State of Rs. 10,00,000 (12% on 10,00,000)	10,00,000	1,20,000		
Input tax credit on purchases of goods from within state (800000 x 6% each for SGST & CGST)	8,00,000		48,000	48,000
Total Input tax credit available		1,20,000	48,000	48,000
Payment of output tax				
Through utilization of ITC of respective tax type		72,000	48,000	48,000
Through utilization of balance in IGST ITC towards CGST and SGST			27,000	21,000
Through cash		Nil	Nil	6,000
Total liability paid		72,000	75,000	75,000
Balance in ITC		Nil	Nil	Nil

*Note:* The manner/order of utilization of input tax credit is as follows:

The amount of IGST credit in the electronic credit ledger can be utilized in the following order:

- IGST against IGST first, then against CGST, and balance, if any against SGST/UTGST
- CGST against CGST and then against IGST
- SGST/UTGST against SGST/UTGST first and then against IGST
- CGST against SGST- Not allowed

**Question 9**

KKR Associates a firm of Company Secretaries in Delhi has an annual turnover of Rs. 76 lakh in the preceding financial year. With reference to the provisions of the CGST Act, 2017, examine whether the firm can opt for the composition scheme.

**Answer:**

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

- a) 0.5% of the turnover in State/ Union territory in case of a manufacturer,
- b) 2.5% of the turnover in State/ Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- c) 0.5% of the turnover in State/ Union territory in case of other suppliers.

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

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

On the basis above noted provisions, a firm of Company Secretaries, being a supplier of professional services (other than restaurant services) is not eligible to apply for composition scheme. Therefore, it has to discharge its tax liability under regular provisions at the applicable rates.

**Question 10**

A retailer dealing in textiles has availed composition scheme. During a financial year, he crosses the turnover of Rs.1 crore during the financial year on 15<sup>th</sup> September? Will he be required to withdraw from composition scheme or allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

**Answer:**

As per the provisions of section 10(3) of CGST Act, 2017, the option availed of by a registered person for payment of tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit of Rs. 1 crore. Therefore, in the present case, the retailer is required to withdraw from composition by filing Form GST CMP-04 on the common portal and start paying tax under regular scheme.

**Question 11**

Mr. Hemant Kumar, a registered supplier of Chandigarh, has received an amount of Rs. 50,000 for providing services of a selector of national team to recognized sports body in Delhi. Will he be liable to charge GST on the same. What will be the status if Mr. Hemant Kumar do not have any other income except Rs. 50,000 as mentioned above.

**Answer:**

Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption Notification No. 9/2017 IT(R) dated 28.06.2017. Thus, service provided as selector of team is not covered in the above referred notification, Mr. Hemant Kumar is liable to charge GST on Rs. 50,000/-.

In case the turnover of Mr Hemant Kumar falls below the minimum threshold of Rs. 20 lakhs, he is not required to charge any tax.

**Question 12**

Mr. Bhudev Aggarwal, an unregistered person receives commission of Rs. 21,00,000/- as an insurance agent from insurance company. Will he be required to charge GST on the same.

**Answer:**

Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Bhudev Aggarwal will not be liable to pay GST on such commission. Instead, the insurance company will pay tax under reverse charge on this particular transaction.

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## Chapter 2

### Supply

*Meaning & scope, types of supply (composite/mixed inter/ intra) Time, Place and Value of Taxable Supply; Import and Export of Goods or Services under GST, Classification of Goods and Services; Job work provisions, agency contracts, e-commerce & TCS.*

#### Question 1

Discuss in brief the 'taxable event' and the scope of the term 'supply' under GST law.

#### Answer:

The 'taxable event' under GST shall be the supply of goods or services or both in terms of Section 7 of the CGST Act, 2017. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as 'supply'.

The term 'supply' is wide in its import covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service for consideration whether or not in the course or furtherance of business. It also includes transactions specified in Schedule I made without consideration.

#### Question 2

What are the necessary elements that constitute supply under CGST/SGST Act?

#### Answer:

In order to constitute a 'supply', the following elements are required to be satisfied, i.e.-

- i. the activity involves supply of goods or services or both;
- ii. the supply is for a consideration unless the transaction is covered by Schedule I to the CGST Act.
- iii. the supply is made in the course or furtherance of business except in case of import of services;
- iv. the supply is a taxable supply; and
- v. the supply is made by a taxable person.

#### Question 3

Mahindra Brothers, registered in Gujarat has supplied 30 tons of a chemical @ Rs. 50,000 per ton (excluding taxes) to P of Uttarakhand on 8th September, 2018. The invoice for the supply has also been issued on the same date. Further, following additional amounts were also charged from P:-

<i>Particulars</i>	<i>Rs.</i>
Freight	1,10,000
Packing charges	1,80,000

Weighing charges	20,000
Cost of instrument specially purchased by Mahindra Brothers to manufacture the chemical	3,10,000

As per the terms of the contract of supply, Mahindra Brothers is required to get the chemical inspected by an independent testing agency before the delivery of the same to P. P has paid such inspection charges amounting to Rs. 12,000 directly to the testing agency. Mahindra Brothers has also received Rs.50,00,000 as a subsidy from State Government for setting up chemical manufacturing plant in Gujarat.

P is required to make payment within 15 days of supply in terms of the contract. However, P delayed the payment of consideration and made payment in November, 2018 thus paid Rs. 15,000 as interest. You are required to calculate the GST liability in this case and due date of deposit. Assume the rate of GST to be 18%.

*Note:* Mahindra Brothers and P are not related and price is the sole consideration for the supply.

**Answer:**

### Computation of GST liability of Mahindra Brothers

**For the month of September 2018**

<i>Particulars</i>	<i>Rs.</i>
Price of chemicals (Rs. 50,000 x 30 tons) [Note-2]	15,00,000
Freight [Note-3]	1,10,000
Packing charges [Note-4]	1,80,000
Weighing charges [Note-4]	20,000
Cost of special instrument [Note-5]	3,10,000
Inspection charges [Note-6]	12,000
Government subsidy [Note-7]	-
Value of taxable supply [Note 9]	21,32,000
IGST @ 18%	3,83,760
Total invoice value	25,15,760

<b>Tax liability for the month of November 2018</b>	
Interest for late consideration [Note-8]	12,712
IGST payable @ 18%	2,288
Total value of Invoice	15000

<b>Due date of deposit of GST</b>		
<i>Particulars</i>	<i>Time of Supply</i>	<i>Due date of deposit [Note-11]</i>
GST liability of Rs. 3,83,760 for the taxable supply made by Mahindra Brothers [Note-11]	September 8, 2018	October 20, 2018
Interest amounting to Rs. 2,288 [Note-10]	November, 2018	December 20,2018

*Notes:*

(1) As per Section 20 of IGST Act, 2017 the provisions of Central Goods and Services Tax Act relating to,–

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) .....

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax. Therefore, all references in the notes would be of CGST Act, 2017.

(2) As per section 15(1) of the CGST Act, 2017, the value of a supply is the transaction value i.e. the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(3) The given supply is a composite supply involving supply of goods (chemical) and services (freight) where the principal supply is the supply of goods. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (chemical) has been considered.

(4) All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.

(5) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.

(6) Any amount that the supplier is liable to pay in relation to supply but incurred by the recipient of supply and not included in the price actually paid for the goods is includible in the value of supply in terms of section 15(2)(b) of CGST Act, 2017.

(7) Subsidies not directly linked to the price and provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017.

(8) Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d) of the CGST Act, 2017.

The interest has to be considered as cum tax value and tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017. (15000\*100/118)

- (9) The tax liability for the month of September, 2018 will not include the tax payable on the amount of interest as the tax liability for the delayed payment of interest arises on the date of receipt of interest in terms of section 12(6) of CGST Act, 2017.
- (10) As per section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received on account of delayed payment of consideration is the date of receipt of interest.
- (11) The time of supply for suppliers of goods having aggregate turnover up to Rs. 1.5 crore in the preceding financial year (excluding composition suppliers) will be the time of issue of invoice vide Notification No. 40/2017 CT dated 13.10.2017. Thus in the present case, the time of supply would be date of issue of invoice i.e. September 8, 2018 assuming that aggregate turnover of Mahindra Brothers in the preceding financial year is upto Rs. 1.5 crore. However, if the aggregate turnover of Mahindra Brothers in the preceding financial year is more than Rs. 1.5 crore, then also the time of supply would be the date of issue of invoice i.e. September 8, 2018 in terms of section 12(2) of CGST Act, 2017 as the invoice for the supply has been issued earlier than the date of receipt of payment
- (12) As per section 39(1) of CGST Act, 2017 every person registered under regular scheme of payment of tax has to furnish the prescribed return on or before 20th of the succeeding month. Further, section 39(7) provides that every regular registered person is liable to pay tax due to the Government by the last date on which he is required to furnish such return. Thus, GST is liable to be paid on or before 20th of the succeeding month.

#### **Question 4**

Distinguish between composite supply and mixed supply. Explain in the context of CGST Act, the liability on composite and mixed supplies.

#### **Answer:**

In terms of Section 2(30) of the CGST Act, 2017, composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. The illustration of composite supply appended to Section 2(30) is as follows:

Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

In terms of Section 2(74) of the CGST Act, mixed supply means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. The illustration of mixed supply appended to Section 2(74) is as follows:

A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of

these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

The tax liability on a composite or a mixed supply shall be determined in the following manner;

- (i) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Hence, in case of composite supply, tax rate as applicable to principal supply would apply to entire supply; and
- (ii) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. Hence, in case of mixed supply, highest tax rate as applicable to any single supply would apply to all supplies forming part of mixed supply.

### **Question 5**

XYZ Ltd. is a manufacturer of Overhead Power Transmission Line Hardware and Accessories. He has entered into two separate contracts with M/s Power Grid Corporation of India – one for supply of materials at ex-factory price (hereinafter referred to as “the First Contract”), and the other for supply of allied services like transportation, insurance, loading/unloading etc. for delivery of materials at the contractee’s site (hereinafter referred to as “the Second Contract”). The two contracts are linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of the other contract. As per XYZ Ltd., since they are not a Goods Transport Agency, for the the Second Contract they arrange for the supply and delivery of materials through various other suppliers of these services. The Contractee is charged for these services at a pre-fixed rate, irrespective of the actual cost incurred. However, the Contractee is unwilling to bear the cost of GST on such services provided to them by XYZ Ltd through various Service Suppliers. In their opinion transportation services provided by non GTA is exempt from tax. XYZ Ltd. hence, wants your opinion regarding the taxability of these services supplied by them.

### **Answer:**

The question above is similar to the one decided by West Bengal Authority for Advance Ruling in the case of IAC Electricals Pvt. Ltd. The Authority has held that here the supplier has been awarded a package for supply of hardware fittings and accessories at different projects under two separate contracts. It is immediately apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any ‘supply of goods’ without a place of supply. As the goods to be supplied under the First Contract involve movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation [refer to Section 10(1)(a) & (d) of the IGST Act, 2017]. The First Contract, however, does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for ‘supply of goods’ unless tied up with the Second Contract. Therefore, services of transportation, in-transit insurance and loading/unloading, being ancillary to the principal supply of goods, shall be treated to taxation under Section 8 (a) of the GST Act as Composite Supply, and the consideration receivable on that account be taxed at the rate at principal supply is taxed.

### **Question 6**

XYZ Education Advisory promotes the courses of foreign universities among prospective students. It has tied up with various Universities all over the world. These Universities have engaged them for promotional and marketing activities for promotion

of the courses taught by them and making the prospective students aware about the course fee and other associated costs, market intelligence about the latest educational trend in the territory and ensuring payment of the requisite fees to the Universities if the prospective students decide upon pursuing any course promoted by the Applicant. XYZ Education Advisory receives consideration in the form of commission from the foreign University for these services rendered to prospective students. It wants to know whether the service provided to the Universities abroad would be considered “export” within the meaning of Section 2(6) of the Integrated Goods and Services Act, 2017, and, therefore, a zero-rated supply under the CGST Act 2017?

### **Answer**

The facts of the case are similar to the matter before Authority of Advance Ruling in the case of Global Reach Education Services Pvt Ltd where the West Bengal Authority for Advance Ruling has held that Section 2(6) of the Integrated Goods and Services Tax Act, 2017, reads as “ “export of services” means the supply of any service when -

- i) the supplier of service is located in India;
- ii) the recipient of service is located outside India;
- iii) the place of supply of service is outside India;
- iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8;”

It is, thus, evident from the above citation that in the case of Export of Services all the conditions as laid down under Section 2(6) of IGST Act 2017 is to be followed in totality without any violation, and that there is no scope of partial compliance of the conditions laid down therein. The main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission.

XYZ Education Advisory, therefore, represents the University in the territory of India and acts as its recruitment agent and not as an independent service provider.

Being an intermediary service provider, the place of supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. The place of supply under the above legal framework is the territory of India. As the condition under section 2(6)(iii) of the IGST Act is not satisfied, the service provided by XYZ Education Advisory to the foreign universities does not qualify as “Export of Services”, and is, therefore, taxable under the GST Act.

Pertinently, the referred Advance Ruling has also been affirmed by the Appellate AAR.

### **Question 7**

Harivallabh, a registered supplier, rendered taxable service for Rs. 2 lakhs on 1-10-2018. The tax invoice was raised on 9-11-2018. Payment was received the next day. Ascertain the time of supply for GST purposes.

### **Answer**

The time of supply as per section 13 of CGST Act, 2017 would be 01.10.2018 i.e. earliest of the following:

- (a) Date of provision of service (01.10.2018)
- (b) Date of receipt of payment (10.11.2018)

Further, Rule 47 of the CGST Rules, 2017 provides that tax invoice in case of supply of service shall be issued within 30 days from the date of supply of service.

Thus, in the present facts, Tax Invoice should have been issued by Mr. Harivallabh within 30 days from the date of providing of service on 01-10-2018 i.e. by 31.10.2018.

Tax invoice issued/raised on 09-11-2018 is beyond the stipulated time limit.

### **Question 8**

What is High Sea Sales? Whether the High Sea Sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under section 3(7) of the Customs Tariff Act, 1975 and separately under Section 5 of IGST Act, 2017?

#### **Answer:**

High Sea Sales is a situation whereby the original importer sells the goods to a third person before customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who receives the goods from the original importer during the said sale. High Sea Sales being an Inter-state transaction under GST Laws are subject to IGST.

The Central Government vide Circular No. 33 /2017-Customs dt 01-08-2017 clarified that in terms of proviso to Section 5(1) of IGST Act, 2017, IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. [Thus IGST will be levied only once].

### **Question 9**

Discuss whether the following transactions will be considered as supply or not under GST laws

- a) An individual buys a car for personal use and after a year sells it to a car dealer.
- b) A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence.
- c) Provision of service or goods by a club or association or society to its members.

#### **Answer:**

- a) No, because the sale of old and used car by an individual is not in the course or furtherance of business and hence does not constitute supply. [Section 7 CGST Act]
- b) Yes. As per Sl. No.1 of Schedule-I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets shall constitute a supply under GST even where no consideration is involved.
- c) Yes. Provision of facilities by a club, association, society or any such body to its members shall be treated as supply. This is included in the definition of 'business' in section 2(17) of CGST/SGST Act.

### **Question 10**

Discuss whether the following transactions/activities will be treated as supply of goods or supply of service

- a) Transfer of right to use goods
- b) Works contracts and Catering services

- c) Supply of software
- d) Goods supplied on hire purchase basis

**Answer:**

- a) Transfer of right to use goods shall be treated as supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST/SGST Act.
- b) Works contracts and catering services shall be treated as supply of services as both are specified under Sl. No. 6 (a) and (b) in Schedule-II of the GST law.
- c) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software shall be treated as supply of services as listed in Sl. No. 5 (2)(d) of Schedule -II of the GST law.
- d) Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

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# Chapter 3

## Input Tax Credit & Computation of GST Liability

### *Input tax credit; Computation of GST liability*

#### Question 1

Explain the mechanism under the CGST Act, 2017 for claiming Input Tax Credit while making payment of Taxes.

**Answer:**

#### **Eligibility and Conditions for taking Input Tax Credit**

- (i) **General Power to take credit [Section 16(1)]**: Subject to such conditions and restriction as may be prescribed, every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business.
- (ii) Input tax credit as may be allowed shall be credited to the electronic credit ledger of such person.
- (iii) **Conditions for taking credit [Section 16(2)]** : Following conditions need to be fulfilled before availing the credit of any input tax.
  - a) Invoice : He is in possession of a tax invoice or debit note issued by supplier registered under this Act, or such other tax payment documents as may be prescribed;
  - b) Receipt: He has received the goods or services or both.
  - c) Tax actually paid: Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
  - d) Return furnished: He has furnished the return under section 39.

The following are other important considerations applicable in specific circumstances:

- (i) **Receipt of goods in lots against an Invoice**: where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment.  
**ITC availed to be paid along with interest if payment to the supplier not made in 180 days of date of invoice** : Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed. As per Rule 37(3) CGST Rules, the Interest shall be calculated for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability is paid.
- (ii) **Credit can be availed if payment is made subsequently**: The recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- (iii) **Section 16(3)** - ITC not allowed in respect of tax component of capital goods if depreciation claimed on in under Income tax Act: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.
- (iv) **Section 16(4)-Time limit for availing of Input Tax Credit:** A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. Effectively, the last date for availing ITC on an invoice issued in a particular financial year shall be 31st December of the following financial year.

## Question 2

Nargis Agro Traders located at Jaipur and engaged in the business as retail traders provides the following details of its inward and outward supplies made during the month of July, 2018 :

	Items	(Amount in Rupees)	
		Inward Supply	Outward Supply
(i)	Sugar Candies	1,00,000	1,20,000
(ii)	Chocolate Bars	80,000	1,00,000
(iii)	Wafers Packets	75,000	60,000
(iv)	Biscuits	50,000	50,000

The rate of tax under IGST on the items are 5%, 12%, 12% and 18% respectively. Your are required to calculate the amount of IGST payable and the date by which the due tax is to be paid by the trader for the month of July, 18 after availing the Input Credit.

### Answer:

*Note:*

- (i) Since GST statutes require that GST is to be charged separately, hence, all prices are taken as ex-tax values.
- (ii) It is assumed that both purchase and sales are inter-state transactions.

1. Calculation of outward tax payable by Nargis Agro Traders on the sales during July, 2018.

Item	Value in Rs.	Rate	Tax in Rs.
Sugar Candies	1,20,000	5%	6,000
Chocolates Bars	1,00,000	12%	12,000
Wafers Packets	60,000	12%	7,200
Biscuits	50,000	18%	9,000
			34,200

## 2. Calculation of Input Tax available on Inward Supplies

<i>Item</i>	<i>Value in Rs.</i>	<i>Rate</i>	<i>Tax in Rs.</i>
Sugar Candies	1,00,000	5%	5,000
Chocolates Bars	80,000	12%	9,600
Wafers Packets	75,000	12%	9,000
Biscuits	50,000	18%	9,000
Total Input Tax Credit			32,600

Total tax payable - Rs.34,200

Mode of payment

By debiting electronic credit ledger - Rs. 32,600

By debiting electronic cash ledger Rs. Rs. 1600

Due date for payment of tax shall be 20<sup>th</sup> of August 2018.

### Question 3

Dinesh Enterprises is a manufacturing company and wants to know the eligibility of Input Credit on fuel (Pet coke /furnace oil) used for the production of finished products.

#### Answer:

Under Section 16(1) of the CGST Act, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Thus, in principle, input tax credit is available on all goods provided they are used or intended to be used in the course of or in furtherance of business.

As such, Section 9(2) of CGST Act, 2017 provides that tax on supply of few petroleum products viz. petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

However, pet coke and furnace oil are not excluded from the scope of GST.

In light of Section 16(1) CGST read with Section 9(2) of the said Act, input tax credit of GST charged on Pet Coke and furnace oil shall be available , if such goods are used or intended to be used in the course of or in furtherance of the business of Dinesh Enterprises.

### Question 4

Jayakumar Textiles Ltd., purchased a machinery on 12th August, 2017 for Rs.12 lakhs (excluding GST). The company put the machinery to use after the purchase and availed input tax credit for the eligible amount. The machinery was sold as second hand machinery on 14th May, 2018 for Rs.9 lakhs. During purchase as well as sale of the machinery, the GST rate applicable was 18%. Assuming that there was no change in legal position after November, 2017, discuss the steps which Jayakumar Textiles Ltd., is required to take at the time of sale of the secondhand machine. Briefly state the statutory provisions involved.

**Answer:**

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

- (a) Input tax credit 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
- (b) Tax on transaction value.

Jayakumar Textiles Ltd. is required to take the steps in the light of above provisions for payment of tax at the time of sale of second hand machinery. The amount payable on sale of machinery shall be:

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Input tax credit taken on machine	(1200000 x 18%)	2,16,000
<i>Less</i> : Input tax credit to be reversed @ 5% per quarter for the period of use of machine from August, 2017 to May, 2018		
(i) For the year 2017-18	(216000 x 5%) x 3 Qtrs.	(32,400)
(ii) For the year 2018-19	(216000 x 5%) x 1 Qtr. 10,800	(43,200)
Amount required to be paid as per (a) above		1,72,800
Tax leviable on transaction value (900000 x 18%) as per (b) above		1,62,000
Amount payable towards sale of machine being higher of Rs. 1,72,800/- and Rs. 1,62,000/-		1,72,800

**Question 5**

XYZ Ltd, having its head office at Mumbai, is registered as Input Service Distributor (ISD). It has three units in different cities situated in 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year. XYZ Ltd. furnishes the following information for the month of July 2018 :

- CGST paid on services used only for Mumbai Unit : Rs. 3,00,000
- IGST, CGST & SGST paid on services used for all units : Rs. 12,00,000

Total turnover of the units for the previous financial year is as follows :

<i>Unit</i>	<i>Turnover (Rs.)</i>
Total Turnover of three units	Rs. 10,00,00,000
Turnover of Mumbai unit	Rs. 5,00,00,000
Turnover of Jabalpur unit	Rs. 3,00,00,000

Determine the credit to be distributed by XYZ Ltd. to each of its three units.

**Answer:**

Section 20 of the CGST Act provides mechanism for the distribution of input tax credit by the Input tax distributor (ISD) .

Input Tax Credit to be distributed by XYZ Ltd. a registered ISD on different Units for July, 2018 is detailed as below;

Particulars	Total Credit	Credit to be distributed (Amount in Rs.)		
		Mumbai	Jabalpur	Delhi
CGST paid on the services used for Mumbai office only	300000	300000	-	-
IGST, CGST and SGST paid on the services used for all units in operation during the year (see note)	1200000	600000	360000	240000
Total	1500000	900000	360000	240000

*Note :* The input-tax credit has been distributed on all the units on the pro-rata basis of the turnover of each of the Units in the ratio of 5:3:2.

**Question 6**

Siddharth Transports Ltd., is running a regular tourist bus service, carrying passengers and goods from Coimbatore, Tamil Nadu to Trivandrum, Kerala, with effect from 1st August, 2017 and is charging IGST on transportation services under forward charge mechanism. Discuss whether on Inter-state movement of tourist buses from one depot to another of Siddharth Transports Ltd. would be leviable to IGST.

**Answer:**

The legal provisions in GST laws are as under:

- As per Section 24(1) of the CGST Act**, persons making any inter-State taxable supply shall be required to be registered under this Act.
- As per Section 25(4) of the said Act** a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- Schedule I of the said Act** specifies situations where activities are to be treated as supply even if made without consideration which also includes supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.
- Section 7(2) of the CGST Act** envisages that activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

The issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including trucks, buses, etc., (a) carrying goods or passengers or both; or (b) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST. Based on such recommendation, the Government suitably issued a *Circular No. 1/1/2017 IGST dated 07.07.2017 to clarify such position.*

In view of above, the inter-state movement of conveyance of Siddharth Transports Ltd shall not be treated as supply and consequently IGST will not be payable thereon..

*(Reference in this regard may be made to)*

### **Question 7**

Define the term "works contract" under the CGST Act, 2017? Can input tax credit be availed on works contract service?

#### **Answer:**

As per Section 2(119) of the CGST Act, 2017, "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Section 17(5)(d) of the CGST Act 2017 states that input tax credit is blocked on goods or services received by a taxable person for construction of an immovable property on own account.

However, if a supplier is engaged in providing further supplies of works contract services, input tax credit can be availed.

### **Question 8**

XYZ is a transporter who has opted to provide goods transport agency services exclusively under Reverse Charge Mechanism without the benefit of input tax credit. The company has its registered office in Karnataka. The turnover of the transporter in the previous year 2016-17 was Rs 55 lakh. It expects the revenue to grow by 20% in the current year. Owing to the growing demand, the transporter decided to increase its capacity and purchased an additional truck for supply of services on 01.12.2017. The purchase price of the truck was Rs. 20 lakh exclusive of GST @ 28%. However, with effect from 01.04.2018, the transporter decides to opt for forward charge mechanism (FCM) and pay GST @ 12% with the benefit of input tax credit. The turnover of the company for the year ended on 31.03.2018 was Rs.70 lakh.

(a) The transporter wants to know whether it has to register under GST?

(b) In case in the above question, if the transporter. is already registered with respect to certain taxable supplies being made by it along with supply of services under RCM, other facts remaining the same, can it take input tax credit on additional truck purchased? If yes, then how much credit can be availed?

Advice the transporter on the above issues with reference to the provisions of GST law.

#### **Answer:**

(a) Section 22(1) of the CGST Act, 2017 inter alia provides that every supplier, whose aggregate turnover in a financial year exceeds Rs. 20,00,000, is liable to be

registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services. However, a person exclusively engaged in the business of supplying goods and/or services under Reverse Charge Mechanism is not liable to registration in terms of Notification No. 5/2017 – Central Tax dated 19th June, 2017 issued under section 23(2) of CGST Act, 2017.

In the given case, the turnover of the company for the year ended on 31.03.2018 is Rs 70 lakh which is more than the threshold limit of Rs. 20 lakh. Therefore, as per section 22 of CGST Act 2017, the company, in the ordinary case, will be liable to registration. However, since the transporter supplied services exclusively under reverse charge mechanism till 31.03.2018, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.

However, the position will change from 01.04.2018 as the transporter opts to supply services under forward charge mechanism and its turnover is above Rs. 20 lakh. Therefore, the company needs to register within 30 days from 01.04.2018 (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017. Further, the company cannot avail exemption of Rs. 20 lakh from 01.04.2018 as the GST law does not provide any threshold exemption from payment of tax but threshold exemption from obtaining registration (which in this case had been crossed).

- (b) Notification No. 11/2017 – Central Tax dated 28th June 2017 as amended by Notification No. 20/2017 read with Rule 43(1)(a) of the CGST Rules, 2017 disallows input tax credit on goods, services and capital goods used or intended to be used exclusively for effecting supplies under Reverse Charge Mechanism(RCM) to a transporter. The treatment of Input Tax Credit( ITC) in this case is similar to ITC in case of supply of exempt goods or services. Thus, until 31.3.2018, the company was not entitled avail ITC in respect of the truck purchased on 1.12.2017.

As per section 18(1)(d) of the CGST Act, 2017, where an exempt supply of goods and/or services by a registered person becomes a taxable supply (from RCM to FCM in the present case), such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, the transporter could not claim credit on the new truck till the time the supply of GTA services was being made under Reverse Charge Mechanism. However, it can claim credit from 31.03.2018 - the day immediately preceding the date from which he decided to supply services under FCM (01.04.2018).

The credit will be available for the remaining useful life of the machinery and will be computed as follows:

Date of purchase of Truck (Capital Goods)	01.12.2017
Date on which credit becomes eligible	31.03.2018
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on New Truck [Rs. 20,00,000 x 28%]	Rs. 5,60,000
Credit to be reduced [Rs. 5,60,000 x 5% x 2]	Rs. 56,000
Amount of credit that can be taken [Rs. 560,000 – Rs.56,000]	Rs.5,04,000

### Question 9

Where a supplier transfers a running business as a whole either due to sale, merger, amalgamation of such business, whether the portion of the un-utilized input tax credit by the supplier can be claimed immediately by the recipient?

#### Answer:

There is no specific provision under the Act prohibiting transfer of such unutilized credit. Rather, Section 18(3) specifically provides that when there is a change in constitution of a registered person on account of sale, merger, or amalgamation of business with specific provision of transfer of liabilities, the registered taxable person shall be allowed to transfer the input tax credit which remains unutilized, provide registered person furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Therefore, if the recipient is registered under the Act, he should be eligible to claim such unutilized credits. In a situation, where the recipient is not registered under the Act, he may have to make a fresh application for registration and claim such unutilized credits after making intimation to the department.

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# Chapter 4

## Procedural Compliance under GST

*Registration; Tax Invoice, Debit & Credit Note, Account and Record, Electronic way Bill, Payment of Tax, TDS, Returns & Refund, Valuation, Audit & Scrutiny; Assessment.*

### Question 1

What is aggregate turnover? A Ltd. is a registered person in Andhra Pradesh State where his intra-state turnover is Rs. 45 lakhs and also has inter-state turnover of Rs. 20 lakhs in Rajasthan and intra-state turnover of Rs. 5 lakhs Maharashtra. How to compute the aggregate turnover and in which states is he required to apply for registration?

#### Answer:

As per Section 2(6) of the CGST Act, "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

The company A Ltd. will be required to take registration in all the three states as its aggregate turnover is above the threshold limit. Aggregate turnover of persons having the same PAN is computed on all India basis that is for persons having turnover in multiple States, aggregate turnover is computed as a sum of turnovers of all the registrations. Therefore, the Aggregate turnover of A Ltd. will be sum of turnovers of all the three States (i.e.) Andhra Pradesh, Rajasthan and Maharashtra- Rs. 45 lakhs+ Rs. 20 lakhs+ Rs. 5 lakhs = Rs. 70 lakhs.

### Question 2

Vinod, a supplier of goods in Vadodara furnishes the following particulars pertaining to supplies likely to be effected by him during the third and fourth quarters of the FY 2017-18 :

Value of supply of goods chargeable to GST	Rs. 18 lakhs
Goods to be supplied to World Health Organization, Ahmedabad office	Rs. 4 lakhs

All supplies will be within the State only. He desires to know whether he should get himself registered for GST purposes. Advise him suitably.

#### Answer:

#### Computation of total supplies of Vinod

Particulars	Rs. (in Lakhs)
Value of Supply of goods chargeable to GST	18
Goods to be supplied to World Health Organisation [Though this is	4

an exempt SUPPLY BUT INCLUDIBLE for ascertaining aggregate turnover]	
Aggregate Turnover	22

It is to be noted that aggregate turnover would include, Taxable Supplies, Exempt Supplies, Zero Rated Supplies and Inter State Supplies, but not the inward supplies in which tax is payable by a person on reverse charge basis. Since the aggregate turnover during third and fourth quarter of 2017-18 of Mr. Vinod exceeds Rs. 20 lakhs, he is advised to apply for registration under GST laws.

### Question 3

Who is a 'casual taxable person' under the GST? Mr. A of Ludhiana is participating in Hitex Furniture Expo in Haryana where he has no fixed place of business and exhibiting his products. During the expo, the said products will be sold to the people attending and intending to purchase such products. In such scenario, Mr. A required to obtain registration in the state of Haryana? If yes, how?

#### Answer:

As per Section 2(20) of the CGST Act, "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. Further, Section 25 provides that a casual taxable person shall apply for registration at least five days prior to the commencement of business.

In the present facts, Mr. A is a casual taxable person in the state of Haryana and would be required to register under CGST Act, 2017.

The registration can be for a period of ninety days. At the time of submission of application for registration under sub-section (1) of section 25, he is required to make an advance deposit of tax in an amount equivalent to his estimated tax liability for the period for which the registration is sought. If registration is to be extended beyond the initial period of ninety days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond ninety days is being sought.

### Question 4

What is the difference between casual and non-resident taxable persons?

#### Answer:

Casual and Non-resident taxable persons are separately defined in the CGST/SGST Act in Sections 2(20) and 2(77) respectively. Some of the differences are outlined below:

Casual Taxable Person	Non-resident Taxable Person
Occasional undertakes transactions involving supply of goods or services in a state or UT where he has no fixed place of business.	Occasional undertakes transactions involving supply of goods or services but has no fixed place of business residence in India.
Has a PAN Number	Do not have a PAN Number; A non-resident person, if having PAN number may take registration as a casual taxable person

Same application form for registration as for normal taxable persons viz GST REG-01	Separate application form for registration by non-resident taxable person viz GST REG-9
Has to undertake transactions in the course or furtherance of business	Business test absent in the definition
Has to file normal GSTR-1, GSTR-2 and GSTR-3 returns (GSTR-1 & GSTR-3B as of now)	Has to file a separate simplified return in the format GSTR-5
Can claim ITC of all inward supplies	Can get ITC only in respect of import of goods and /or services.

### Question 5

Is it necessary for the foreign embassy's to get registration under GST Law?

#### Answer:

All UN bodies, Consulate or Embassy of foreign countries and any other class of persons, so notified, would be required to obtain a Unique Identification Number (UIN) from the GST portal. This UIN will be needed for claiming refund of taxes paid by them on the notified supply of goods or services or both received by them.

It is apt to state here that, every person required to be granted a UIN in accordance with Section 25(9) of the CGST Act may submit an application electronically in FORM GST REG-13, duly signed or verified through electronic verification code, in the manner specified in Rule 8. The proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person and issue a certificate in FORM GST REG-06 within a period of 3 working days from the date of the submission of the application. [Rule 17]

Section 25 inter-alia provides that UIN shall be granted or rejected after due verification and within the time prescribed. UIN so granted shall be applicable to the territory of India. UIN shall be deemed to have been granted after the period prescribed (under section 25(10) of the CGST Act) if no deficiency has been communicated to the applicant within that period. Moreover, grant of UIN under the CGST Act / SGST Act shall be deemed to be a grant of UIN under the SGST/CGST Act provided that the application for UIN has not been rejected/no deficiency has been communicated to applicant by the proper officer under SGST/CGST Act within the time specified.

### Question 6

What will be the value of supply of goods or services or both between distinct [section 25 (4) and (5)] or related persons, other than through an agent?

#### Answer:

The value of the supply between distinct persons or related persons, other than through an agent, shall be determined in the following sequential order:

- (a) open market value of such supply;
- (b) value of supply of goods or services of like kind and quality; or
- (c) value as per Rule 30 or Rule 31, in that order.

Rule 30 provides for determination of value equivalent to one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Rule 31 provides that where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter. **Provided** that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Further, where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90 % of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Furthermore, that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

### Question 7

State the Form Number and the due date for its filing under CGST Act, 2017 of the return by :

- (i) a composition scheme taxable person
- (ii) a registered person deducting tax at source
- (iii) an input service distributor.

**Answer:**

Tax Payer	Form No. to be filed	Due date of Filing Return
(i) Composition scheme	GSTR-4	18th of month next to relevant taxable person quarter
(ii) Registered person deducting tax at source	GSTR-7	10th of next month
(iii) Input Service Distributor	GSTR-6	13th of next month

### Question 8

Explain the procedure of furnishing details of outward supplies and of revision for rectification of errors and omissions as per CGST Act, 2017.

**Answer:**

- a) Due date: Every Registered taxable person (other than an Input Service Distributor, a non- resident taxable person and a person paying tax under section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS) by e-commerce operator) shall furnish electronically details of outward supplies of goods or services or both effected during the tax period in Form GSTR-1 by 10th of the month succeeding the tax period.
- b) Contents : Details of outward supplies will include invoice relating to zero rated supplies, inter-state supplies, intra state suppliers, Goods/ Services return, Exports, Supplementary invoices, debit notes and credit notes.

- c) No revision, but, rectification allowed in subsequent returns: Once return is filed/ uploaded it cannot be revised. The mechanism of filing revised returns for any correction of errors / omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

### Question 9

I am a non-resident taxable assessee. What are the returns to be furnished by me?

#### Answer:

A non-resident taxable assessee is liable to file FORM GSTR-5 for furnishing the monthly details of inward and outward supplies, debit/credit notes, tax paid details, details of closing stock and refund claimed, if any. The return should be furnished by 20th of the month succeeding the tax period, or within 7 days from the last day of the validity of registration, whichever is earlier.

### Question 10

Who are required to file Annual Return under CGST Act 2017? Also explain the time limit for filing such return. Is there any requirement of furnishing of the audited annual accounts?

#### Answer:

- (i) **Person liable to file annual return:** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or Section 52, casual taxable person and a non – resident taxable person, shall furnish an annual return for every financial year electronically in FORM GSTR-9. A registered taxable person paying opting to pay tax under the composition scheme is required to file the annual return in FORM GSTR-9A.
- (ii) **Due date is 31st Dec. after end of year:** Annual return shall be filed on or before the 31st day of December following the end of such financial year.
- (iii) **Persons liable to Audit:** If the turnover of the registered taxable person exceeds Rs. 2 crore, then the Annual Return is required to be audited by a Chartered Accountant or Cost Accountant. Further, the registered taxable person also have to submit reconciliation statement in FORM GSTR-9C. If the turnover does not exceed Rs. 2 crore, the registered taxable person can himself compile the details in FORM GSTR-9 and submit the return.

### Question 11

Is there any special document required to be carried during transportation of taxable goods? Briefly explain provisions related to e-way bill as per CGST Act, 2017 relating to:

- (i) When it is being required?
- (ii) What is its validity period?

#### Answer:

- (i) Yes, as per Section 138 of the CGST Act, E-way bill is required to be carried during movement of goods exceeding Rs. 50,000, which is generated on the GST Portal. The person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him such documents and devices as may be prescribed by the Government. On interception of the conveyance, the person in charge shall produce the

prescribed documents and devices for verification and allow inspection of goods by the proper officer.

Rule 138A of the CGST Rules, 2017 provides for the following documents and devices to be carried:-

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner

(ii) The validity period of e-way bill is tabulated as under :

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo :

### Question 12

Hamid is an exporter. He exports machinery out of India and pays 28% IGST. He wants to know the procedure for claim and grant of refund of IGST paid on goods exported out of India? His accountant has advised him to export machinery without payment of IGST and claim refund of unutilized input tax credit? Is it possible, if yes, how?

**Answer:**

**Export on payment of Tax:** In terms of Rule 96 of the CGST Rules, shipping bill filed by an exporter of goods shall be deemed to be an application for refund of IGST tax paid on the goods exported out of India, when.

- (a) person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering no. and date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR- 3B, as the case may be.

In this regard, the details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 are required to be transmitted electronically by the common portal to the system designated by the Customs ("Custom System") and said system will revert the confirmation of export of goods. Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR- 3B, the Custom System shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill or bill of export, shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

Further, the persons claiming refund of integrated tax paid on exports of goods or services should not have -

- (a) received supplies on which the benefit of Notification No. 48/2017-Central Tax, dt. 18.10.2017 or Notification No. 40/2017-Central Tax (Rate), dt. 23.10.2017 or Notification No. 41/2017-Integrated Tax (Rate), dt. 23.10.2017 has been availed; or
- (b) availed the benefit under Notification No. 78/2017-Customs, dt. 13.10.2017 or Notification No. 79/2017-Customs, dt. 13.10.2017.

**Export without payment of Tax on LUT:** As per Rule 96A of CGST Rules, 2017, any registered person availing the option to make a zero-rated supply of goods or services without payment of integrated tax shall furnish a bond or a Letter of Undertaking in FORM GST RFD-11 prior to execution of such supply.

In terms of Notification No. 37/2017 – Central Tax dated 04-10-2017, all registered persons, who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence under the CGST Act, SGST Act, IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees

A self-declaration by the exporter that he has not been prosecuted is sufficient for the purposes of Notification No. 37/2017- Central Tax dated 4-10-2017. Department may verify the claim after acceptance of the LUT, unless Department has any specific information otherwise regarding the prosecution. (Circular No. 8/8/2017-GST dated 4-10-2017)

The registered person (exporters) shall fill and submit FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. (Circular No. 40/14/2018-GST dated 06-04-2018)

Further, an LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio. (Circular No. 40/14/2018-GST dated 06-04-2018) Adding further, any person who is prosecuted for an evasion more than Rs. 2,50,000 shall execute a Bond. The Bond shall be accompanied by Bank Guarantee for 15% of the Bond amount. (Circular No. 8/8/2017-GST dated 04-10-2017) The LUT facility is also extended to Supplies made to SEZ unit/developer.

Where export is made without payment of tax, the exporter can claim the refund of unutilized credit by submitting form GST RFD-01A on the common portal. Such REFUND and refund claims in respect of zero-rated supplies shall be filed for a tax period on a monthly basis. Further, refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period and a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

### Question 13

What are deemed exports? Are deemed exports eligible for refund under GST? If yes, who can file an application for refund in case of deemed export?

#### Answer:

As per Section 2(39) of the CGST Act, “deemed exports” means such supplies of goods as may be notified under Section 147 of CGST Act, 2017.

Section 147 of the CGST Act states that the Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India. Notification No. 48/2017-Central Tax dated 18th October, 2017, hereby notifies the supply of goods listed below as deemed exports-

<i>S. No.</i>	<i>Description of supply</i>
1	Supply of goods by a registered person against Advance Authorisation
2	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3	Supply of goods by a registered person to Export Oriented Unit
4	Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated the 30-06-2017 (as amended) against Advance Authorisation

Yes, deemed exports are eligible for refund as the word refund is defined in Explanation to Section 54 of the CGST Act, 2017 explicitly includes refund of tax and interest paid on supply of goods regarded as deemed exports.

**Application for Refund:** In terms of third proviso to Rule 89 inserted vide Notification No. 47/2017 – Central Tax dated 10.10.2017, application for refund in case of deemed export can be filed by:

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

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## Chapter 5

### Demand and Recovery, Advance Ruling, Appeals and Revision

#### Question 1

Which are the applicable provisions for the purpose of recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized under CGST Act?

#### Answer:

Section 73 and Section 74 of the CGST Act deals with the recovery of tax short paid or not paid or amount erroneously refunded or input tax credit wrongly availed or utilized.

In particular, Section 73 deals with the cases where there is no invocation of fraud/suppression/mis-statement etc. and Section 74 deals with cases where the provisions related to fraud/suppression/mis-statement etc. are invoked.

#### Question 2

What are the modes of recovery of tax available to the proper officer under GST laws?

#### Answer:

Section 79 CGST Act deals with the modes of recovery of dues. In terms of the said provision, the proper officer may recover the dues in following manner:

- a) Deduction of dues from the amount owned by the tax authorities payable to such person.
- b) Recovery by way of detaining and selling any goods belonging to such person;
- c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person.
- d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered;
- e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue;
- (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him;
- (g) Through enforcing the bond /instrument executed under this Act or any rules or regulations made thereunder;
- (h) CGST arrears can be recovered as an arrear of SGST and vice-versa.

#### Question 3

The proceedings under the CGST Act, 2017 before the authorities including the Appellate Tribunal can be attended by the “Authorized Representative”. Explain who can act as an authorized representative under the Act.

**Answer:**

As per Section 116(2) of the CGST Act, the expression “authorized representative” shall mean a person authorized by the person referred to in section 116(1) to appear on his behalf, being:-

- (a) his relative or regular employee; or
- (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- (c) any Chartered Accountant, a Cost Accountant or a Company Secretary who holds a certificate of practice and who has not been debarred from practice; or
- (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years. However, such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
- (e) any person who has been authorized to act as a goods and services tax practitioner on behalf of the concerned registered person.

**Question 4**

Hema Lubricants Ltd., filed an appeal before the Appellate Tribunal against the order of the Appellate Authority, wherein the issue was revolving around the place of supply. The Tribunal decided the issue against the company and in favour of the department. The company is of the firm opinion that its view is correct and hence there is need to take the issue to an appellate forum higher than the Appellate Tribunal. As the Company Secretary, dealing with indirect tax matters, advise the company about filing of appeal before the appropriate forum.

**Answer:**

Where the supplier or the department is not satisfied with the order passed by the State Bench or Area Benches of the Appellate Tribunal, appeal can be filed before the High Court if the High Court is satisfied that such an appeal involves a substantial question of law [Section 117(1) of the CGST Act, 2017].

Nevertheless, appeal against orders passed by the National Bench or Regional Benches of the Tribunal can be filed only before the Supreme Court and not before High Court.

As per section 109(5) of the Act, only the National Bench or Regional Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in the given case relates to the place of supply, the appeal in case would have been decided by the National Bench or Regional Bench of the Tribunal.

Consequently, in case the merits of the case favours Hema Lubricants Ltd., it may choose to file an appeal before the Supreme Court.

**Question 5**

Whether proceedings for rectification, appeal and revision, of any order passed by an officer appointed under CGST Act can lie before an officer appointed under the SGST Act?

**Answer:**

As per Section 6(3) of the CGST Act, any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under the CGST Act shall not lie before an officer appointed under the SGST Act or UTGST Act.

**Question 6**

Bharghav Pesticides Ltd., a domestic company, intends to start a business in Kolkata, involving supply of certain goods, mostly meant for foreign buyers in China. There is some difficulty in the classification of the goods. Can the company seek advance ruling from the Authority for Advance Ruling formed under CGST Act, 2017 in respect of the issue of classification of goods? Can the company also seek ruling on issues involving place of supply?

**Answer:**

Section 97(2) of the CGST Act, 2017 prescribes the questions/ matters on which the advance ruling can be sought which are as below:

- a. classification of any goods or services or both;
- b. applicability of a notification issued under the provisions of this Act;
- c. determination of time and value of supply of goods or services or both;
- d. admissibility of input tax credit of tax paid or deemed to have been paid;
- e. determination of the liability to pay tax on any goods or services or both;
- f. whether applicant is required to be registered;
- g. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Therefore, the Company can seek the advance ruling for determining the classification of goods proposed to be supplied.

Determination of place of supply is not one of the specified questions/ matters on which advance ruling can be sought under section 97(2). Hence, the applicant cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by the applicant.

**Question 7**

Briefly discuss whether the following powers vest with the Commissioner (Appeals) under the GST Act, 2017:

- (i) Remanding the case back to the adjudicating authority; and
- (ii) Condoning the delay in filing appeal before him.

**Answer:**

- (i) No, Commissioner (Appeals) being the first appellate authority does not have power to remand the case back to the adjudicating authority for fresh adjudication. The power is not given to Commissioner (Appeals) by Statute. However, Power to remand has been specifically given to Appellate Tribunal under Section 113 of the CGST Act, 2017.
- (ii) Yes, Commissioner (Appeals), if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the specified period, allow it to be presented within a further period of one month under section 107(4) of the CGST Act, 2017.

### Question 8

What is the jurisdiction of the National (& Regional Benches) & the State (& area benches) of the Tribunal?

**Answer:**

The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases **where one of the issues involved relates to the place of supply.**

The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters **other than those cases where the issues involved relates to the place of supply.**

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## Chapter 6

### Inspection, search, seizure, offences & penalties

#### Question 1

What is the meaning of the term “Search”?

#### Answer:

The term ‘search’ has not been expressly defined in the GST statutes. However, the powers of the GST officers to search any premises have been contained in section 67 of the CGST Act.

Section 67(2) provides that where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things.

Further, section 67(10) of the Act provides that the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

#### Question 2

What is the meaning of the term “Inspection”? Who can order for carrying out “Inspection” and under what circumstances?

#### Answer:

The term ‘Inspection’ has not been expressly defined under the GST statutes. However, section 67(1) of the Act provides that where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that —

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

#### Question 3

What are the powers of the proper officer during the search?

**Answer:**

The officer authorised under to carry out inspection shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied. (Section 67(4) of the Act).

**Question 5**

Who can order for Search and Seizure under the provisions of CGST Act?

**Answer:**

An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.

**Question 6**

What is a Search Warrant and what are its contents?

**Answer:**

The written authority to conduct search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

- i. the violation under the Act,
- ii. the premise to be searched,
- iii. the name and designation of the person authorized for search,
- iv. the name of the issuing officer with full designation along with his round seal,
- v. date and place of issue,
- vi. serial number of the search warrant,
- vii. period of validity i.e. a day or two days etc.

**Question 7**

When do goods become liable to confiscation under the provisions of CGST/SGST Act?

**Answer:**

As per section 130 of CGST/SGST Act, goods become liable to confiscation when any person does the following:

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;
- (ii) does not account for any goods on which he is liable to pay tax under this Act;
- (iii) supplies any goods liable to tax under this Act without having applied for the registration;
- (iv) contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.

### **Question 8**

What powers can be exercised by an officer during valid search?

**Answer:**

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under CGST/SGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

### **Question 9**

Can a CGST/SGST officer access business premises under any other circumstances?

**Answer:**

Yes. Access can also be obtained in terms of Section 65 of CGST/SGST Act. This provision of law is meant to allow an audit party of CGST/SGST or C&AG or a cost accountant or chartered accountant nominated under section 66 of CGST/SGST Act, access to any business premises without issuance of a search warrant for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. However, a written authorization is to be issued by an officer of the rank of Commissioner of CGST or SGST. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

### **Question 10**

What is meant by the term 'Seizure'?

**Answer:**

The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

### **Question 11**

What are the safeguards provided in GST Act (s) in respect of Search or Seizure?

**Answer:**

Certain safeguards are provided in section 67 of CGST/SGST Act in respect of the power of search or seizure. These are as follows:

- i. Seized goods or documents should not be retained beyond the period necessary for their examination;

- ii. Photocopies of the documents can be taken by the person from whose custody documents are seized;
- iii. For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;
- iv. An inventory of seized goods shall be made by the seizing officer;
- v. Certain categories of goods to be specified under CGST Rules (such as perishable, hazardous etc.) can be disposed of immediately after seizure;
- vi. Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST/ Commissioner of SGST.

### **Question 12**

What is the time limit for issuance of SCN in respect of seized goods?

#### **Answer:**

The SCN in respect of seized goods is to be issued within six months from the date of seizure of goods, otherwise the goods shall be returned to the person from whose possession they were seized. However, the period of six months, on sufficient cause being shown can be extended by the proper officer for a further period not exceeding six months. (Section 67(7) of the Act.)

### **Question 13**

When can the proper officer authorize 'arrest' of any person under CGST / SGST Act?

#### **Answer:**

The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or Sec 132(2) of the CGST/SGST Act.

Thus, the provisions of arrest are highly restricted in GST. The power can be exercised only where combined evasion of duty is Rs. 2 crore or more and where offence is very severe (only five offences) namely where supplies have been made without any invoice; invoice made without any supply; tax collected but not paid to the Government within three months of such collection; tax collected in contravention of provisions of the GST Act but not paid to the Government and taking input tax credit without receiving goods and services.

Furthermore, the arrest made for duty evasion ranging from Rs. 2 crores to Rs. 5 crores are bailable and those beyond Rs. 5 crores are non-bailable. (Section 69 of the CGST Act, 2017)

### **Question 14**

What are cognizable and non-cognizable offences under CGST Act?

#### **Answer:**

In section 132 of CGST Act, it is provided that the offences relating to taxable goods and/or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs. 5 crores, shall be cognizable and nonbailable. Other offences under the act are non-cognizable and bailable.

### **Question 15**

When can the proper officer issue summons under CGST Act?

#### **Answer:**

Section 70 of CGST/SGST Act gives powers to a duly authorized CGST/SGST officer to call upon a person by issuing a summon to present himself before the officer issuing the summon to either give evidence or produce a document or any other thing in any inquiry which an officer is making. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

### **Question 16**

What can be the consequences of nonappearance to summons?

#### **Answers:**

The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summons, he is liable to a penalty up to Rs 25,000/- under section 122(3) (d) of CGST/SGST Act.

### **Question 17**

What are the guidelines for issue of summons?

#### **Answer:**

The Central Board of Indirect Taxes and Customs (CBIC) has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- i. summons is to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;

- ii. the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;
- iii. summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;
- iv. where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;
- v. in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
- vi. senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

### **Question 18**

What are the precautions to be observed while issuing summons?

#### **Answer:**

The following precautions should generally be observed when summoning a person:

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

### **Question 19**

What are the prescribed offences under CGST/SGST Act?

#### **Answer:**

The CGST/SGST Act codifies the offences and penalties in Chapter XVI. The Act lists 21 offences in section 122, apart from the penalty prescribed under section 10 for availing compounding by a taxable person who is not eligible for it. The said offences are as follows: -

- 1) Making a supply without invoice or with false/ incorrect invoice;

- 2) Issuing an invoice without making supply;
- 3) Not paying tax collected for a period exceeding three months;
- 4) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;
- 5) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;
- 6) Non collection or lower collection of or nonpayment of tax collectible at source under section 52;
- 7) Availing/utilizing input tax credit without actual receipt of goods and/or services;
- 8) Fraudulently obtaining any refund;
- 9) Availing/distributing input tax credit by an Input Service Distributor in violation of Section 20;
- 10) Furnishing false information or falsification of financial records or furnishing of fake accounts/documents with intent to evade payment of tax;
- 11) Failure to register despite being liable to pay tax;
- 12) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently;
- 13) Obstructing or preventing any official in discharge of his duty;
- 14) Transporting goods without prescribed documents;
- 15) Suppressing turnover leading to tax evasion;
- 16) Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;
- 17) Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;
- 18) Supplying/transporting/storing any goods liable to confiscation;
- 19) Issuing invoice or document using GSTIN of another person;
- 20) Tampering/destroying any material evidence;
- 21) Disposing of /tampering with goods detained/ seized/attached under the Act.

### **Question 20**

What is meant by the term penalty?

#### **Answer:**

The word “penalty” has not been defined in the CGST/SGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

### **Question 21**

What is the quantum of penalty provided for in the CGST /SGST Act?

**Answer:**

Section 122(1) provides that any taxable person who has committed any of the offences mentioned in section 122 shall be punished with a penalty that shall be higher of the following amounts:

- The amount of tax evaded, fraudulently obtained as refund, availed as credit, or not deducted or collected or short deducted or short collected, or
- A sum of Rs. 10,000/-.

Further Section 122(2) provides that any registered person who has not paid tax or makes a short payment of tax on supplies shall be liable to penalty which will be the higher of:

- 10% of the tax not paid or short paid, or
- Rs. 10,000/-

**Question 22**

Is any penalty prescribed for any person other than the taxable person?

**Answer:**

Yes. Section 122(3) provides for levy of penalty extending to Rs. 25,000/- for any person who-

- aids or abets any of the 21 offences,
- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

**Question 23**

What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

**Answer:**

If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported.

**Where owner comes forward:** - Such goods shall be released on payment of the applicable tax and penalty equal to 100% tax or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is 2% of value of goods or Rs 25,000/- whichever is lesser.

**Where owner does not come forward:** - Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is 5% of value of goods or Rs 25,000/- whichever is lesser.

#### **Question 24**

What is meant by confiscation?

#### **Answer:**

The word 'confiscation' has not been defined in the Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short it means transfer of the title to the goods to the Government.

#### **Question 25**

Under which circumstances can goods be confiscated under CGST/SGST Act?

#### **Answer:**

Under Section 130 of the CGST Act, goods shall be liable to confiscation if any person:

- supplies or receives any goods in contravention of any provision of this Act and such contravention results in evasion of tax payable under the Act, or
- does not account for any goods in the manner required under the Act, or
- supplies goods that are liable to tax under the Act without applying for registration, or
- uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of CGST/SGST Act (unless used without knowledge of owner)
- contravenes any provision of the Act/Rules with the intention of evading payment of tax.

#### **Question 26**

Can any conveyance carrying goods without cover of prescribed documents be subject to confiscation?

#### **Answer:**

Yes. Section 130 provides that any conveyance carrying goods without the cover of any documents or declaration prescribed under the Act shall be liable to confiscation. However, if the owner of the conveyance proves that the goods were being transported without cover of the required documents/declarations without his knowledge or connivance or without the knowledge or connivance of his agent then the conveyance shall not be liable to confiscation as aforesaid.

#### **Question 27**

What is Prosecution?

**Answer:**

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person.

**Question 28**

Which are the offences which warrant prosecution under the CGST/SGST Act?

**Answer:**

Section 132 of the CGST/SGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:

- a) Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice;
- b) Issuing an invoice without making supply;
- c) Not paying any amount collected as tax for a period exceeding 3 months;
- d) Availing or utilizing credit of input tax without actual receipt of goods and/or services;
- e) Obtaining any fraudulent refund)
- f) evades tax, fraudulently avails ITC or obtains refund by an offence not covered under clause (a) to (e);
- g) Furnishing false information or falsification of financial records or furnishing of fake accounts/ documents with intent to evade payment of tax;
- h) Obstructing or preventing any official in the discharge of his duty;
- i) Dealing with goods liable to confiscation i.e. receipt, supply, storage or transportation of goods liable to confiscation;
- j) Receiving/dealing with supply of services in contravention of the Act;
- k) tampers with or destroys any material evidence or documents
- l) Failing to supply any information required of him under the Act/Rules or supplying false information;
- m) Attempting to commit or abetting the commission of any of the offences at (a) to (l) above.

**Question 29**

What is the punishment prescribed on conviction of any offence under the CGST/SGST Act?

**Answer:**

The scheme of punishment provided in section 132(1) is as follows:

<b>Offence involving</b>	<b>Punishment (Imprisonment extending to ___)</b>
Tax evaded exceeding Rs. 5 crore or repeat offender for Rs. 250 lakh	5 years and fine

Tax evaded between Rs. 2 crore and Rs.5 crore	3 years and fine
Tax evaded between Rs.1 crore and Rs.2 crore	1 years and fine
<ul style="list-style-type: none"> <li>• False records</li> <li>• Obstructing officer</li> <li>• Tamper records</li> </ul>	6 months

### Question 30

What is a culpable state of mind?

#### Answer:

While committing an act, a “culpable mental state” is a state of mind wherein-

- the act is intentional;
- the act and its implications are understood and controllable;
- the person committing the act was not coerced and even overcomes hurdles to the act committed;
- the person believes or has reasons to believe that the act is contrary to law.

Section 135 of the CGST Act provides that in any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

*The explanation to the said provision further provides that:-*

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability

### Question 31

Can a company be proceeded against or prosecuted for any offence under the CGST/SGST Act?

#### Answer:

Yes. Section 137 of the CGST/SGST ACT provides that every person who was in-charge of or responsible to a company for the conduct of its business shall, along-with the company itself, be liable to be proceeded against and punished for an offence committed by the company while such person was in-charge of the affairs of the company. If any offence committed by the company-

- has been committed with the consent/connivance of, or
- is attributable to negligence of—

any officer of the company then such officer shall be deemed to be guilty of the said offence and liable to be proceeded against and punished accordingly.

### **Question 32**

Are there any monetary limits prescribed for compounding of offence?

#### **Answer:**

Yes. The lower limit for compounding amount is to be the greater of the following amounts:

- 50% of tax involved, or
- Rs. 10,000.

The upper limit for compounding amount is to be greater of the following amounts:

- 150% of tax involved or
- Rs. 30,000.

### **Question 33**

What is the procedure for compounding of offences?

#### **Answer:**

The applicant has to make an application in form GST CPD-01 to the Commissioner for compounding of an offence. The application is not allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made. On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD02, on being satisfied that the applicant has cooperated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

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## Chapter 7

### Compliance rating, anti-profiteering, GST practitioners, authorised representative, professional opportunities

#### Question 1

What is the purpose of Compliance rating mechanism?

#### Answer:

As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

#### Question 2

What are the objectives of Compliance Rating?

#### Answer:

The following are the major benefits / objectives of compliance rating:

- **Efficient input tax credit mechanism:** A person can claim an input tax credit in GSTR-2 (return with purchase details for the month) only when the seller also files his GSTR-1 (return with monthly sales details), and the details on both these forms reconcile or match with each other. This was not so earlier.

The rating of a taxable person would be relevant to determine the eligibility of input tax credit in respect of inward supplies, selection for scrutiny and other administrative/monitoring purposes. The rating would be based on tax payer's record of compliance with the provisions of CGST, SGST and IGST. The details of parameters and methodology for rating would be prescribed.

- **Preferred supplier chosen by buyers / Increase customer base:** As compliance rating increases, so is customer base, in accordance with rating and reputation. The buyer will prefer to choose those suppliers whose rating is good in the market.
- **Will ensure healthy competition and enhanced compliances:** The objective of this concept of tax administration is to make people fully GST compliant and on time with the uploading of invoices and other necessary documents, which will ensure healthy competition in the market.
- **Lower or poor rating may attract stricter scrutiny and surveillance:** If rules and regulations are regularly followed, then the chances of business coming under the spotlight or scrutiny of the GST authorities are significantly reduced, as the need to audit accounts will be nil.

### **Question 3**

What is Anti-Profiteering measure?

**Answer:**

As per section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

In pursuance of the powers conferred by this section, the government has constituted the National Anti-Profiteering Authority (NAA). NAA is required to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. NAA has power to investigate cases against the registered person who has not passed on the benefits by way of commensurate reduction in prices and order reduction in prices, cancel registration, impose penalty and/or return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest.

### **Question 4**

Is there a sunset clause for Anti-Profiteering law'?

**Answer:**

As such the governing provision i.e. section 171 CGST Act does not have a sunset clause, however, Rule 137 of the CGST Rules provides that the Anti-profiteering Authority shall cease to exist after the expiry of two years from the date on which the Chairman of the Authority enters upon his office unless the GST Council recommends otherwise.

The effect is that after the expiry of two years from the date on which the Chairman of the Anti profiteering authority enters its office, there will not be any authority to entertain the applications under Section 171 of the CGST Act.

### **Question 5**

What is the function of National Anti-Profiteering Authority (NAA)?

**Answer:**

The National Anti-Profiteering Authority (NAA) is required to determine whether the benefit of input tax credit or reduction in the tax rate has actually resulted in a commensurate reduction in the price of the goods or services or both.

The NAA has the power to identify the registered person who has not passed on the benefit of reduction in tax rate or input tax credit by way of commensurate reduction in prices and it may order reduction in prices; return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest; cancellation of registration of the supplier and imposition of penalty. In case the eligible recipient is not identifiable or does not claim return of the amount, the NAA may order the supplier to deposit the amount in the Consumer Welfare Fund.

### **Question 6**

What is the methodology to identify cases of profiteering?

#### **Answer:**

Rule 126 of the CGST Rules, 2017 vests the power to determine the methodology & procedure with the National Anti-Profiteering Authority constituted by the Central Government under Section 171 (2) of the CGST Act, 2017. The guiding principle mentioned in the said Rule states that the reduction in tax rate on supply of goods or services or benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in prices. The methodology and procedure adopted to identify cases of profiteering may vary from case to case, depending upon the facts of the case and the nature of goods or services supplied.

### **Question 7**

What is the time-frame for deciding cases of anti-profiteering provisions?

#### **Answer:**

The maximum time envisaged for resolution of cases is 9 months excluding the time taken by the State-level screening committee and the Standing Committee (maximum 2 months) for processing the complaints.

### **Question 8**

How will a person desirous of becoming a GST Practitioner apply and whether a GST Practitioner need to register separately under GST?

#### **Answer:**

A person desirous of becoming GST Practitioner has to submit an application in the form GST PCT-1. The application shall be scrutinized and, if found eligible, the GST practitioner certificate shall be granted in the form GST PCT-2.

If the aggregate turnover of the GST Practitioner crosses the prescribed threshold limit, he will need to register as a normal taxpayer.

### **Question 9**

How can a taxpayer search for a GST Practitioner?

#### **Answer:**

There is functionality on the dashboard of the registered person on the GST Portal wherein he can get the contact details of all GST Practitioners in a State, district and Pincode wise.

### **Question 10**

What is the concept of authorised representative in GST?

#### **Answer:**

As per Section 116 of the CGST Act, 2017, any person who is entitled or required to appear before an officer appointed under the CGST Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation,

authorise a person to appear on his behalf. A person can authorise to appear on his behalf as his representative:

- a) his relative or regular employee; or
- b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
- c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
- d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

- e) any person who has been authorised to act as a GST Practitioner on behalf of the concerned registered person.

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# Chapter 8

## Integrated Goods and Services Tax (IGST)

### Question 1

What are inter-state supplies under GST?

**Answer:**

As per Section 7 of the IGST Act, 2017, supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in-----

- two different States;
- two different Union territories;
- a State and a Union territory

Further,

- import of goods and services;
- supplies where the supplier is located in India and the place of supply is outside India;
- supplies to/ by SEZ units or developer; or
- any supply that is not an intra state supply

shall be treated to be supply of goods and/or services in the course of inter-State trade or commerce.

### Question 2

What are the advantages of IGST Model?

**Answer:**

The major advantages of IGST Model are:

- a. Maintenance of uninterrupted ITC chain on inter-State transactions;
- b. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer;
- c. No refund claim in exporting State, as ITC is used up while paying the tax;
- d. Self-monitoring model;
- e. Ensures tax neutrality while keeping the tax regime simple;
- f. Simple accounting with no additional compliance burden on the taxpayer;
- g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.

### Question 3

How will the IGST be paid? Discuss with the help of an example.

**Answer:**

The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy, -

- First available ITC of IGST shall be used for payment of IGST;
- Once ITC of IGST is exhausted, the ITC of CGST shall be used for payment of IGST;
- If both ITC of IGST and ITC of CGST are exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.

Remaining IGST liability, if any, shall be discharged using payment in cash.

Example:

IGST Liability: Rs. 1,00,000

ITC available:

- IGST: Rs. 50,000
- CGST: Rs. 20,000
- SGST: Rs. 20,000

Liability	Order of setting of Liability			
	1.	2.	3.	4.
	IGST	CGST	SGST	Cash
<b>IGST 100000</b>	50000	20000	20000	10000

*Note* : The above example is based in the legal position as applicable as on 30.11.2018.

**Question 4**

Define “export of goods” and “export of services”. How are exports be treated under GST?

**Answer:**

The definition of “export of goods” in section 2(5) of IGST Act has been straight taken from section 2(18) of the Customs Act, 1962 and means taking goods out of India to a place outside India.

As per section 2(6) of IGST Act, “export of services” means the supply of any service when,--

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

All exports are deemed as inter-State supplies. Exports of goods and services are treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay IGST by utilizing ITC or in cash at the time of export and claim refund of IGST paid.

### Question 5

How is zero rated supply different from exempted supply?

#### Answer:

The difference between zero rated supplies and exempted supplies is tabulated as below:

S. No.	Basis of difference	Exempted Supplies	Zero rated supplies
1	Meaning	“Exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act, 2017 or under section 6 of the IGST Act, 2017 and includes non-taxable supply.	“Zero-rated supply” means export of goods or services or both or supply of goods or services or both to a SEZ developer or a SEZ unit as per section 16 of IGST Act, 2017.
2	Tax treatment	No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed.	No tax on the outward supplies; Input supplies also to be tax free.
3	Input-tax credit	Credit of input tax needs to be reversed, if taken; No ITC on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero-rated supplies.
4	Value of supplies for apportionment of ITC	Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
5	Registration requirement	Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the	A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall

		CGST or IGST Act shall not be liable to registration.	have to be claimed.
6	Tax invoice/ Bill of supply	A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

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## Chapter 9

### Union Territory Goods and Services Tax (UTGST)

#### Question 1

Briefly discuss the provisions related to levy of UTGST.

#### Answer:

Section 7 of UTGST Act, 2017 is a charging section which provides that Union Territory Goods and Services Tax (UTGST) will be levied on all intra state supplies of goods or services or both within a Union Territory.

Intra-State supply of alcoholic liquor for human consumption is outside the purview of UTGST.

Value for levy is guided by Section 15 of the CGST Act.

Rates for UTGST are rates as notified by the Government on the recommendations of the GST Council. Maximum rate of UTGST will be 20%.

Section 7 of UTGST, ACT, 2017 deals only with UTGST. In case of intra-state supply CGST shall also be levied at a rate equal to UTGST.

For Example: If an Intra-state Supply attracts a rate of GST of 12% then CGST will be levied at 6% and UTGST will be levied at 6%.

#### Question 2

A registered dealer, based in Chandigarh, makes supply to another registered dealer located in Chandigarh, valuing rupees 1, 20,000. Applicable rate of GST is 12%. Calculate the amount of tax payable under GST.

#### Answer:

As the location of the supplier and the place of supply are in the same Union Territory, it is the case of intra-state supply and accordingly CGST + UTGST will be levied.

#### Computation of GST liability

<i>Particulars</i>	<i>Rs.</i>
Value of taxable supply	120000
CGST @ 6%	7200
UTGST @ 6%	7200
Total tax liability	14400

#### Question 3

Discuss the provisions of Section 9 of the UTGST Act regarding utilization of input tax credit of various taxes available in electronic credit ledger for payment of UTGST.

#### Answer:

As per Section 9 of the UTGST Act, the amount of input tax credit available in the electronic credit ledger of the registered person on account of,—

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- (b) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
- (c) the Union territory tax shall not be utilised towards payment of central tax.

<i>Credit of</i>	<i>Priority of taxes where credit will be used to pay</i>		
	<i>Priority-1</i>	<i>Priority-2</i>	<i>Priority-3</i>
<b>IGST</b>	IGST	CGST	SGST/UTGST
<b>CGST</b>	CGST	IGST	-
<b>SGST/UTGST</b>	SGST/UTGST	IGST	-

Note 1: Credit of CGST can never be used to pay off SGST/ UTGST liability.

Note 2: The above example is based in the legal position as applicable as on 30.11.2018.

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# Chapter 10

## GST Compensation to States

### Question 1

Why Goods and Services Tax (Compensation to States) Act, 2017 enacted?

#### Answer:

One of the biggest challenges while introducing GST in India was that states were opposing GST, because of their fear of losing revenue after introduction of GST. The fear was more pronounced in case of manufacturing/ supplier states since the GST was to accrue to the state(s) where the actual consumption of goods takes place as **GST is a destination-based tax.**

In order to assure steady flow of revenues to the states by way of compensating the loss, if it arises, Clause 18 of **The Constitution (One Hundred And First Amendment) Act, 2016 specifically provided** that the Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

In line with the Constitutional amendment, the Government enacted the legislation known as, **The Goods And Services Tax (Compensation To States) Act, 2017** for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force (01/07/2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council

### Question 2

Briefly discuss the provisions related to levy of compensation cess.

#### Answer:

Compensation Cess is levied as per section 8(1) of the Goods and Service Tax (Compensation to States) Act, 2017. As per this section, Compensation Cess is levied on notified supply of goods or services or both for the purpose of providing compensation to the States for loss of revenue for 5 years or for such period as may be prescribed on recommendation of Council, from enactment of GST law, which may arise due to implementation of GST.

### Question 3

Explain the following:

- a) Projected Growth Rate
- b) Base Year
- c) Projected Revenue

**Answer:**

- a) **PROJECTED GROWTH RATE:** Section 3 provides that the projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent (14%) per annum.
- b) **BASE YEAR:** Section 4 provides that for the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year. **Thus Base year for this purpose is 2015-16.**
- c) **PROJECTED REVENUE:** Section 6 provides that “The projected revenue for any year in a State shall be calculated by applying **the projected growth rate** over the **base year revenue** of that State.

**Illustration**—If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows—

$$\text{Projected Revenue for 2018-19} = 100 (1 + 14/100)^3 = 148.15$$

**Question 4**

What valuation is to be adopted for levying compensation cess? Assessable value of an article imported into India is Rs. 100/-. Basic Customs Duty is 10% ad-valorem; Social Welfare Charge- 10%; Integrated tax rate is 18% and compensation cess is 15%. Compute the value for compensation cess and amount of compensation cess.

**Answer:**

The value of the goods for the purpose of levying compensation cess shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

<i>Particulars</i>	<i>Duty</i>
(A) Assessable Value	Rs. 100/-
(B) Basic Customs Duty@10%	Rs.10/-
(C) Social Welfare Charge @10%	Rs.1/-
(D) Value for Integrated Tax	Rs.111/-
(E) Integrated Tax @18%	Rs.19.98
(F) Value for Compensation Cess	Rs.111
(G) Compensation Cess @ 15%	Rs. 16.65

**Question 5**

Will refund of Compensation Cess be admissible under GST?

**Answer:**

Yes. Circular No.1/1/2017-Compensation Cess issued by Board clarifies that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess (wherever applicable), that is to say that:

- a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3) (b) of the IGST, 2017]; or
- b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017].

Thus, refund of compensation Cess (if its on account of zero rated supplies) will be admissible to the claimant. The process and procedure for claim of such refund will be same as for refund of IGST (on both goods and services) and in respect of accumulated ITC of compensation cess.

Further, in cases of unutilised ITC of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess, it has been clarified vide circular no. 45/19/2018-GST dated 30th May 2018, that refund of accumulated ITC can be claimed in such situations, however the rebate route i.e. payment of IGST and claiming refund of compensation cess of IGST paid will not be permissible in in such cases. In such cases they cannot utilise the compensation cess paid on inputs for payment of IGST in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

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# Chapter 11

## Industry/ Sector Specific Analysis

### Question 1

When a transaction of supply of service treated as export supply under GST?

**Answer:**

As in the earlier service tax regime, five conditions have been prescribed for a service to be treated as exports in GST. The five conditions comprised in the definition of the term “Export of Services” under section 29(6) of IGST Act, 2017 are cumulative and are to be fulfilled in totality in order to consider a transaction of supply of service as an export supply. They are as under:

- a. the supplier of service is located in India;
- b. the recipient of service is located outside India;
- c. the place of supply of service is outside India;
- d. the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- e. the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

### Question 2

How are supplies by and to SEZs treated in GST?

**Answer:**

There is no change in the SEZ scheme. All imports by SEZs are exempted from any duty/tax.

As per section 7(5)(b) of the IGST Act, 2017, a supply of goods or services or both to or by a SEZ developer or a SEZ unit is treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Further as per section 16 of IGST Act, 2017 supply of goods or services or both to a SEZ developer or a SEZ unit is considered as zero rated supply.

### Question 3

Discuss in brief the applicability of GST Rates for hotels and restaurants.

**Answer:**

**GST rates for Restaurants**

<i>Type of Restaurants</i>	<i>GST Rate applicable</i>	<i>ITC</i>
All restaurants	5%	Not available
Restaurants within hotels (room tariff < Rs. 7,500)	5%	Not available
Restaurants within hotels	18%	Available

(room tariff of any unit of accommodation >7,500 )		
Outdoor catering	18%	Available

### Restaurants availing Composition Scheme - 5%

Restaurants whose aggregate turnover is less than Rs 1 crore [Rs. 1.5 Cr w.e.f 1.4.2019], can avail the benefits of “composition scheme” under section 10 of CGST Act, 2017. With this scheme, only 5% GST will be levied on the supply breaking-up into 2.5% CGST and 2.5% SGST.

This is the only service which has been brought under composition scheme. Otherwise composition scheme is available to traders and small manufacturers only.

This has to be paid out of the pocket by the restaurants as they are neither entitled to avail input tax credit of taxes paid on inputs such as raw materials or the service, nor they can recover the tax from their customers.

### GST on Accommodations in Hotels

The GST rates applicable for accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes depends upon the ‘value of supply’ per unit per day.

Additionally, they will be able to claim input tax credit in respect of the services rendered which reduces the overall impact of tax on the consumer.

The GST rates applicable on such accommodations can be summarized as under –

<i>Value of supply (per unit per day)</i>	<i>GST Rate applicable</i>
Less than Rs. 1000/-	Nil
Rs. 1000/- and above but less than Rs. 2500/-	12%
Rs. 2500/- and above but less than Rs. 7500/-	18%
More than Rs. 7500/-	28%

### Question 4

What is “Electronic Commerce” and who is an “E-commerce Operator”?

#### Answer:

As per Section 2(44) of the CGST Act, 2017, **Electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network.

As per Section 2(45) of the CGST Act, 2017, **Electronic-commerce Operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

### Question 5

Discuss the following:

- Is it mandatory for e-commerce operator to obtain registration?
- Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?

- c) Whether TCS is required to be collected by e-commerce operators on supply of services by unregistered suppliers through their portal?

**Answer:**

- a) Yes. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him. The benefit of threshold exemption is not available to e-commerce operators.
- b) As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017 – Central Tax dated 15th November, 2017 in this regard.
- c) As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an ecommerce operator is mandatorily required to register. However, vide Notification 65/2017-Central Tax dated 15th November, 2017 a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform were exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. **Since such suppliers are not liable for registration, e-commerce operators are not required to collect TCS on supply of services being made by such suppliers through their portal.**

**Question 6**

Briefly discuss Tax Collection at Source (TCS) provisions.

**Answer:**

This provision is applicable only for E-Commerce Operator under section 52 of CGST/SGST Act. Every E-Commerce Operator, not being an agent, needs to withhold an amount calculated at the rate of one percent of the “**net value of taxable supplies**” made through it where the consideration with respect to such supplies is to be collected by the operator. Such withheld amount is to be deposited by such E-Commerce Operator to the appropriate GST account by the 10th of the next month. The amount deposited as TCS will be reflected in the electronic cash ledger of the supplier.

The “**net value of taxable supplies**” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month.

Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act / UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018 – Central Tax and 02/2018-Integrated Tax both dated 20th September, 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.

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# Customs Law

## Question 1

Write a short note on the Basic Customs Duty.

### Answer:

Basic customs duty is levied under section 12 of the Customs Act, 1962 read with section 2 of the Customs Tariff Act 1975. The duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act 1975 or any other law for the time being in force, on goods imported into or exported from India.

The rates of Customs duty are specified in first and second schedule of Section 2 of customs tariff act 1975 (First Schedule enlist the goods liable to import duty and Second Schedule enlist the goods liable to export duty).

There are different rates for different goods but merit rate is generally 7.5%.

**Basic duty may exempted, wholly or partially, with or without any conditions, by a notification under section 25 of the Customs Act.**

Basic Customs Duty is also exempted upfront or through drawback mechanism where the imported goods are meant for re-export or for use in the manufacture of export goods.

The basic customs duty may have two rates: (A) Standard rates (B) Preferential rates:

**(A) Standard Rates:** Standard rate is charged where there is no provision for preferential treatment.

**(B) Preferential Rates:** If the goods are imported from the area notified by the Government as preferential area duty to be charged at preferential rates. Preferential rate is applied only where the owner of the article (importer) claims at the time of importation, with supporting evidence, that the goods are chargeable with the preferential rate of duty and if importer fails to claim with supporting evidence then duty to be charged as standard rates.

Basic Customs Duty is not creditable against any tax or duty, whatsoever.

## Question 2

Explain the concept of "Import" and "importer", with reference to the provisions of the Customs Act, 1962.

### Answer:

As per section 2(23) of the Customs Act, 1962, the term import refers to bringing into India from a place outside India. Import of goods into India commences when the goods enter the territorial waters of India, but gets completed only when the goods become part of the mass of goods within the country.

As per section 2(26) of the Customs Act, 1962, importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

### Question 3

Write a short note on the taxable event for levy of import duty under Customs Act, 1962 giving reference of decided case law, if any.

#### Answer:

In *Garden Silk Mills Ltd. v. UOI* 1999 SC ELT 358, the Supreme Court held the import of goods in India commences when the goods enter into territorial waters of India but continues and is completed when goods become part of the mass of goods within the country. The taxable event is at the time when the goods reach customs barrier and the bill of entry for home consumption is filed. In case of warehoused goods, the goods continue to be in customs hand. Hence, import takes place only when goods are cleared from the warehouse for home consumption by filing ex-bond bill of entry.

### Question 4

What do you understand with the term “Container” used under Customs Act, 1962?

#### Answer:

Word ‘container’ is not defined in the Customs Act. In normal sense, —

1. A container is simply a box. It is no more complex than a truck body, a railway freight van or a ship’s hold. Containers are made of aluminum, steel, fibre glass or plywood for lightness with steel frames to give strength. Standard sizes for containers are 40, 20, or 10 feet long, 8ft, wide and 8 ft, in height. Some have open tops or sides for loading special cargo.
2. Liquids are carried in boiler shaped tanks surrounded by rectangular frame work.
3. Other containers are insulated or refrigerated and are constructed according to International standards and inspected by Insurance companies.

### Question 5

Bholaram imported certain goods in November, 2017 and an ‘into bond’ bill of entry was presented on 28th November, 2017. Assessable value was US \$ 1,00,000. Order permitting the deposit of goods in warehouse for 3 months was issued on 2nd Dec. 2017. Bholaram neither obtained extension of warehousing period nor cleared the goods within the permitted warehousing period of 1<sup>st</sup> March, 2018. Only after a notice was issued under section 72 of the Customs Act, 1962 demanding duty and other charges, Bholaram removed the goods on 15th April, 2018.

Compute the amount of duty payable by Bholaram while removing the goods from warehouse, assuming that no additional duty or special additional duty is payable. You are supplied with the following information:

	<i>28.11.2017</i>	<i>01.03.2018</i>	<i>15.04.2018</i>
<b>Rate of Exchange per USD</b>	56	55	54
<b>Rate of basic customs duty</b>	15%	10%	5%

IGST@12%.

**Answer:**

**Amount of duty payable by Bholaram**

<i>Particulars</i>	<i>Amount</i>
Assessable Value in \$	\$1,00,000
Rate of Exchange [As per section 14, rate of exchange in force on date of presentation of bill of entry for warehousing shall apply. Hence, rate in force on 28-11-2017 would apply.]	Rs. 56 per USD
Assessable Value in Rs.	Rs. 56,00,000
Rate of duty [As per Section 15 Customs Act, the rate of duty shall be the treated as applicable on the date of filing bill of entry for clearance of goods from the warehouse. However, the Hon'ble Supreme Court in the matters of Kesoram Rayon (SC) and SBEC Sugars (SC)] held that since goods remained in warehouse beyond permitted period, hence, as per section 72, they are deemed to have been removed on expiry of warehousing period and rate of such date shall be applicable. In the present case, thus, the rate of duty as applicable on 1-3-2018 would apply.	10%
BCD @ 10% of assessable value [10% of Rs. 56,00,000]	Rs. 5,60,000
Social Welfare Surcharge @10% [560000*10%]	Rs. 56,000
Value for the purpose of levying Integrated Tax [5600000+560000+56000]	Rs. 62,16,000
IGST @12%	Rs. 7,45,920
Total duty & tax payable [560000+56000+745920]	Rs. 13,61,920

**Question 6**

Mention the categories of persons who can be searched by the proper officer of customs under section 100 of the Customs Act, 1962.

**Answer:**

Under Section 100 of the Customs Act, 1962, the proper officer of the Customs, where he has reason to believe that a person has secreted any goods, liable to confiscation or any documents thereto, he may search such persons. The categories of persons that could be searched in this respect are: -

- (i) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;
- (ii) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

- (iii) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (iv) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
- (v) any person in a customs area.

### Question 7

Distinguish between “First Appraisalment and Second Appraisalment.”

#### Answer:

First Appraisalment or goods based assessment means, assessment of goods after the goods are examined. This system is resorted to only in exceptional cases where it is not possible for the Appraiser to determine the value or classification of the goods or for any other reason on the basis of the documents as produced by the importers.

Second Appraisalment or document based means making the assessment on the basis of the declaration made by the importers on the strength of documents such as invoice, catalogue, literature showing the composition and use, price lists, etc., as produced by the importers. Under this system, the goods are examined after assessment and collection of duty.

### Question 8

Whether Anti-dumping duty/ safeguard duty are to be added for determining the value for integrated tax?

Assessable value of an article imported into India is Rs. 100/-; Basic Customs Duty is 10% ad-valorem; Social Welfare Charge is 10%; Safeguard duty is Rs.20/-; Integrated tax rate is 18% and Compensation cess is 15%. Compute total tax liability.

#### Answer:

Yes. In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as Compensation Cess shall also include Anti-Dumping Duty amount and Safeguard duty amount.

<i>Particulars</i>	<i>Duty</i>
(A) Assessable Value	Rs. 100/-
(B) Basic Customs Duty@10%	Rs.10/-
(C) Social Welfare Charge @10%	Rs.1/-
(D) Safeguard Duty	Rs. 20/-
(E) Value for Integrated Tax [100+10+1+20]	Rs.131/-
(F) Integrated Tax @18% [131*18%]	Rs.23.58
(G) Value for Compensation Cess	Rs. 131/-
(H) Compensation Cess @ 15% [131*15%]	Rs. 19.65
(I) Total tax liability (B+C+D+F+H)	Rs. 74.23

### Question 9

Distinguish between Transit and Transshipment of goods under Customs Act, 1962.

#### Answer

The basic difference between transit and transshipment is that in 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle. Section 53 dealing with transit provide that any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of customs duty, to any place out of India or any customs station. However, all these goods must be mentioned in import manifest or import report submitted by person in charge of conveyance. Under section 54 of Customs Act, Transshipment means transfer from one conveyance to another (the conveyance may be vehicle, ship or aircraft). Such transshipment may be to any major port or airport in India. The following points detail the distinction between transit and transshipment:

<i>S.No.</i>	<i>Transit of Goods u/s 53</i>	<i>Transshipment of Goods u/s 54</i>
1.	Goods are lying in the ship at an intermediate port.	Goods are transferred at the intermediate port.
2.	Only import manifest has to be submitted for entry.	Bill of Transshipment/declaration is also required for transshipment.
3.	Transit is allowed in every port normally.	Transshipment is allowed in specified ports only.
4.	No supervision is required for transit goods.	Transshipment takes place under supervision of proper officer.
5.	No additional conditions or formalities are required.	Specific conditions are imposed if goods are deliverable at Indian port.
6.	Only one conveyance is involved in transit goods and the same carries the goods to the port of clearance.	At least two conveyances are involved in transshipment and the transferee ship reaches the destination port.

### Question 10

State with brief reasons, whether the following statements are true or false in the light of the provisions contained in the Customs Act, 1962:

- a) Customs area includes a warehouse;
- b) A beneficial owner of imported goods is a person on whose behalf the goods are being imported.

#### Answer:

- a) The given statement is True.**

The definition of customs area as provided under section 2(11) of the Customs Act, 1962 has been amended vide the Taxation Laws (Amendment) Act, 2017 to include within its ambit a warehouse also.

Consequent to the above, the customs area is now defined to mean the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

**b) The given statement is True.**

Subsequent to the insertion of new section 2(3A) in the Customs Act, 1962 vide the Finance Act, 2017, the beneficial owner has been defined to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

**Question 11**

Particulars relating to import of product Z by Mr. Prahalad on 23-12-18 from Antwerp, Belgium to the Chennai airport, are given hereunder:

<i>FOB value of the Product</i>	<i>\$ 10,000</i>
Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	\$ 2,000
Insurance	\$ 1,000
Unloading charges at Chennai airport	Rs. 34,000
Exchange rate notified by CBIC on 23-12-18	1\$ = Rs. 64
Exchange rate notified by RBI on 23-12-18	1\$ = Rs. 64.50
Basic customs duty	10%
IGST	12%

Ascertain the assessable value and the amount of duty payable by Mr. Prahalad.

**Answer:**

Computation of assessable value and total tax & duty payable by Mr. Prahalad in respect of import of product Z

<i>Particulars</i>	<i>Value</i>
FOB value of the Product	\$ 10,000
Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation, restricted to 20% of FOB Value (20% of \$ 10,000)	\$ 2,000
Insurance (Actual)	\$ 1,000
CIF Value	\$ 13,000
Unloading charges at Chennai airport (Not to be added as in terms of	Nil

5 <sup>th</sup> proviso to Rule 10(2) of the CVR, where the goods are imported by air, the value towards the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB Value. Since, the limit of 20% has already been exhausted by adding USD 2000 on this account.	
Exchange rate notified by CBIC 1\$=Rs 64 is to be considered for arriving at the assessable value of imported product (13,000 * 64)	Rs. 8,32,000
Basic customs duty at 10% [832000*10%]	Rs. 83,200
Social Welfare Charge @10% [83200*10%]	Rs. 8,320
Value for the purpose of levying integrated tax [832000+83200+8320]	Rs. 9,23,520
IGST @12% [923520*12%]	Rs. 1,10,822
Total duty & tax payable[83200+8320+110822]	Rs. 2,02,342

### Question 12

What are the conditions governing refund of import duty under section 26A of the Customs Act, 1962? Explain briefly.

#### Answer:

Section 26A of Customs Act, 1962 provides that where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-

- (i) The imported goods are found to be defective or not in conformity with the specifications and they should not have been reworked or repaired or used after import.
- (ii) The goods should be identified to the satisfaction of the AC/DC of Customs as the goods which were imported.
- (iii) The importer had not claimed drawback under any other provision of this Act.
- (iv) Goods should either be re-exported or abandoned or destroyed in the presence of the proper officer within 30 days from the date on which goods were imported (the period can be extended upto three months).
- (v) Application for refund should be made within six months from the relevant date in prescribed form and manner.

Note: No refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

### Question 13

Briefly mention the provisions about temporary detention of baggage in the Customs Act, 1962.

## Answer

As per Section 80 of the Customs Act, where:

- (i) the baggage of a passenger contains any article which is dutiable or import of which is prohibited; and
- (ii) in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of leaving India, the article may be returned to him through any other passenger authorized by him and leaving India, or the article may be sent as cargo consigned in his name.

## Question 14

Write short note on the following:

- a) Safeguard Duty
- b) Anti-dumping duty

## Answer

### a) SAFEGUARD DUTY (SECTION 8 OF CUSTOM TARIFF ACT, 1975)

The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry. The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

#### Conditions:

1. Safeguard duty is product specific.
2. It is in addition to any other duty.

Safeguard duty, unless revoked earlier, cease to have effect on the expiry of four years from the date of imposition.

If the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition.

However, in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

If the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected.

#### Exemptions from safeguard duty:

1. If an article originating from developing country and share of imports of that article from that country does not exceed 3% of the total imports of that article in India it should be exempted from safeguard duty.
2. If an article originating from more than one developing countries and aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India then it should be exempted from safeguard duty.

Articles imported by 100% EOU or units in a free trade zone or Special Economic zone safeguard duty shall not be applicable unless specifically made applicable in the notification.

**b) ANTI DUMPING DUTY (SECTION 9 OF CUSTOMS TARIFF ACT, 1975)**

**Dumping:** Dumping means exporting goods to India, at prices lower than the price in the domestic market of the exporting country, subject to certain adjustments.

When the export price of a product imported into India is less than the normal value of like articles sold in the domestic market of the exporter the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article. Anti dumping duty is country specific i.e. it is imposed on imports from a particular country.

Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

**Computation of Anti-dumping duty:** The anti dumping duty is margin of dumping or injury margin whichever is lower.

**Margin of dumping:** Difference between export price and normal value of an article.

**Normal Value means:** comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

**Injury Margin:** It means difference between fair selling price of domestic industry and landed cost of imported product.

**Fair Selling price:** Price at which the industry have expected to charge under normal circumstances in the Indian market.

**Question 15**

Calculate FOB Value, Cost of Insurance, Cost of Freight and Assessable Value where only the CIF value is given as US \$ 5,000. Exchange rate notified by RBI and CBIC are Rs. 70 and Rs. 68 respectively for one US \$.

**Answer:**

As per rule 10(2) proviso 3 of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 where FOB value of goods, cost of insurance, and freight are not ascertainable, then cost of insurance and cost of freight shall be computed as follows:

CIF value - US\$ 5,000 x Rs. 68 = Rs. 3,40,000

Freight & Insurance – Rs. 3,40,000 x 21.125/121.125 = Rs. 59,298

FOB Value – Rs. 3,40,000 – Rs. 59,298 = Rs. 2,80,702

Exchange rate notified by CBIC has to be taken i.e. Rs. 68/US\$.

As per Rule 10 of Valuation Rules, freight and insurance when not available has to be taken as 20% and 1.125% of FOB value respectively.

**Question 16**

Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

<i>Particulars</i>	<i>Amount (US \$)</i>
Cost of the machine at the factory of the exporter	10,000
Transport charges from the factory of the exporter, to the port for shipment	400
Handling charges paid for loading the machine in the ship	25
Buying commission paid by the importer	50
Ligherage charges paid by the importer	100
Ship demurrage charges	200
Freight charges from exporting country to India	2500
<b><i>Date of bill of entry 20-02-2019</i></b> <b><i>(Rate of BCD 20%; Exchange rate as notified by CBIC Rs. 60 per US \$)</i></b>	
<b><i>Date of entry inward 25-01-2019</i></b> <b><i>(Rate of BCD 12%; Exchange rate as notified by CBIC Rs. 65 per US \$)</i></b>	
Rate of IGST	12%

**Answer:**

**Computation of assessable value and total customs duty**

<b>Particulars</b>	<b>Amount (US \$)</b>
Cost of the machine	10,000
Add: Transport charges from the factory of the exporter, to the port for shipment	400
Add: Handling charges paid for loading the machine in the ship	25
FOB	10,425
Add: Freight	2,500
Add: Insurance (10425*1.125%)	117
Add: Ligherage charges	100
Add: Ship demurrage charges	200

CIF Value/Assessable value	13,342
	<b>Amount (in Rs.)</b>
Assessable Value (US \$ 13,342 x Rs. 60)	8,00,520
Add : BCD @ 20% (8,00,520 x 20%)	1,60,104
Add : Social Welfare Surcharge @ 10% (1,60,104 x 10%)	16,010
Value for the purpose of levying integrated tax	9,76,634
IGST @12% (976634*12%)	1,17,196
Total duty & tax payable [160104+16010+117196]	2,93,310

**Note:** Buying commission paid by the importer is not included in computing Assessable Value. “**Buying commission**” means fees paid by importer to his agent for the service of representing him abroad in purchase of goods. This commission is not included in the transaction value as it is the amount paid by importer to his agent [Any amount paid to exporter directly or indirectly is only included]. This is valid and laid down by SC in AppoloTyres Ltd V. CC (1997) case and followed in Bombay dyeing and Mfg. V. CC (1997) case and also by tribunal in Reliance Industries V. CC (2007) case.

### Question 17

What is the meaning of the terms Derelict, Jetsam, Flotsam and Wreck used under Customs law?

**Answer:**

**Derelict** – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

**Jetsam** – This refers to goods jettisoned from the vessel to save from sinking.

“Jettisoned” connotes the action of throwing goods overboard to lighten the load of the ship if it is in danger of being sunk.

**Flotsam** – Jettisoned goods which continue floating in the sea are called flotsam.

**Wreck** – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

### Question 18

What is the difference between clearance for home consumption and clearance for warehousing under Customs law?

**Answer:**

Clearance for home consumption implies that, the custom duty on import of the goods has been discharged and the goods are cleared for utilization/home consumption. The goods may instead of being cleared for home consumption may be deposited in a warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption. The importer of the goods require to execute a bond for a sum twice the

amount of duty assessed on the goods at the time of import of goods. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

### Question 19

What is the difference between Section 13 and Section 23 of Customs Act, 1962?

#### Answer:

Section 13 of the Act covers the situation of “pilferage of the goods” and Sec 23 covers “loss of goods” and these are quite different as explained by the table below:

<i>Basis</i>	<i>Section 13</i>	<i>Section 23</i>
Meaning	Pilfer means to steal, especially in small quantities	Words lost or destroyed refers to “total loss” of goods
Duty	Importer shall not be liable to pay duty	Duty if already paid, it will be remitted
Restoration	If goods are restored after pilferage, importer is liable to pay duty	Restoration is not possible
Warehousing	Not apply to this section	Apply to this section
Onus to prove	Does not lie on importer as it comes during examination of officer	Has to prove
Time of occurrence	After unloading but before order for clearance	Before clearance for home consumption

### Question 20

Briefly explain:

- a) Bill of entry
- b) Kinds of bills of entry
- c) Basic documents to be filed along with bill of entry

#### Answer:

- a) A Bill of Entry is a statement of the nature and value of goods to be imported or exported, prepared by the shipper and presented to a customhouse. The Bill of Entry inter alia, has columns for indicating description of goods, value, quantity, marks and numbers, country of origin etc.
- b) There are three kinds of Bills of Entry viz., (i) Bill of Entry for Home-consumption (White Colour) (ii) Warehousing (into-Bond) Bill of Entry (Yellow Colour) (iii) Bill of Entry for Clearance ‘Ex-Bond’ (Green Colour).

The home-consumption Bill of Entry which is printed on white paper is referred to as “white Bill of Entry”, the “into Bond” or “Warehousing Bill of Entry” is printed on yellow paper and “ex-bond” is printed on green paper. Each Bill of Entry has to be filed in quadruplicate. The columns in original are printed in black, in blue in duplicate and in violet in triplicate and in green in quadruplicate.

c) **The following basic documents are to be filed along with the Bill of Entry:**

1. Invoice.
2. Indent and acceptance correspondence pertaining to the Imported goods.
3. Bill of Lading in respect of sea-consignments/Airway Bill in respect of Air Consignments.
4. Letter of credit or Bill of exchange.
5. Insurance policy or Insurance certificate.
6. Import license (Customs purpose copy).
7. Small Scale Industries Certificate in respect of Imports sought to be covered under free goods and Imports subjected to Actual Users (AU) conditions.
8. Catalogue, drawing, write up, analysis certificate as the case may be, in respect of the goods sought to be cleared.
9. Any other connected/relevant document.

**Question 21**

What is the difference between private warehouse and public warehouse under Customs law?

**Answer:**

A warehouse is a designated area where goods are allowed to be stored after landing, without the payment of duty. Public warehouse is appointed under section 57 and Private Warehouse is licensed under section 58 of Customs Act.

<i>Private Warehouse</i>	<i>Public Warehouse</i>
Licensed by the CBIC	Appointed by the CBIC
Owned by the owner of goods	Managed by warehousing corporations
Only goods of owners can be deposited	Goods of any person can be deposited
License can be cancelled for violation of warehousing provisions	No question of cancellation of license

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