

PRACTICE QUESTIONS
ADVANCED TAX LAWS
(Relevant for June 2023 Examination)

Part - I
Indirect Taxes

**[Goods and Services Tax (GST) and
Customs Law]**



**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान

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Lesson 1

An Overview on Goods and Services Tax 'GST'

Historical Background of Indirect Tax in India; International Perspective of GST/VAT; International Scenario of GST/VAT; Need for GST in India; GST Journey; Provisions under the Indian Constitution; Goods & Service Tax Council; Introduction of GST in India; Taxes Pre GST Regime, Concept of GST, Legislative framework of GST; Advantages of GST; Composition Scheme; Reverse Charge Mechanism; Exemption from GST

Question 1

Discuss provision related to GST in Constitution of India.

Answer

Constitution of India is the supreme law of India. Article 246 of the Indian Constitution, lays down three types of lists and distributes legislative powers including taxation, between the Parliament of India and the State Legislatures. It lays down the subject matters with respect to which only the Parliament can make rules, where the State Legislatures can exclusively lay down the rules and a Concurrent List whereby both the Parliament as well as State Legislatures can legislate. Thus, the Constitution of India allocates the power to levy various taxes between the Centre and the states.

Goods & Services Tax (GST) regime of indirect taxes brought a single tax which was levied on supply of goods or services or both with concurrent jurisdiction of centre and states. This led to bringing about amendments in the Constitution so that they may simultaneously levy and collect Goods & Services Tax.

To bring out GST laws governing goods and services, **Article 246A** has been inserted to enable levy of tax on goods and services simultaneously both by Centre and states/ union territories.

The Constitution of India has been amended by the **Constitution (One Hundred and First Amendment) Act, 2016** for this purpose.

Article 269A: Levy and collection of goods and services tax in course of inter-State trade or commerce.

Question 2

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

Answer

Goods and Services Tax (GST) is an Indirect Tax which has replaced many Indirect Taxes in India. The Goods and Service Tax Act was passed in the Parliament on March 29, 2017. The Act came into effect on July 01, 2017. GST is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture 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 3

What are the basic features of Indirect Taxes?

Answer

The following are the basic features of Indirect Taxes:

1. **Taxable Event:** The indirect taxes are levied on purchase/sale/manufacture of goods and provision of services.
2. **Incidence & Impact:** In case of indirect taxes, the incidence and impact fall on two different persons. It means the tax burden is shifted by the supplier to the buyer or recipient of goods or services.
3. **Regressive Taxation:** The indirect taxes do not depend on paying capacity as tax payable on commodity is same whether it is purchased by a poor man or rich person. Therefore, indirect taxes are regressive in nature. There are exceptions to this argument as higher taxes may be imposed on luxury goods.
4. **Impact of Indirect Tax:** The indirect tax on goods and services increases its price. This leads to inflationary trend.
5. **Promotes Welfare:** The harmful or sin products like alcohol, tobacco, etc. may be taxed at higher rate. This practice not only discourages consumption of such goods but also increases the revenue of the State.
6. **Major Source of Revenue:** In India, the contribution of indirect taxes to total tax revenue is more than 50%. Therefore, it is a major source of tax revenue for the Government.

Question 4

What is cascading effect of Tax?

Answer

The cascading effect implies charging tax on tax. In other words, at the time of levy of tax, the total value is considered which is inclusive of all taxes paid up to that point. In this manner, if the tax is always charged on the selling price of the product, the burden of tax keeps on increasing at each point of sales. In this process, the effect of taxation magnifies as at each level tax is calculated on value, which includes taxes already levied and paid. The charging of tax on tax is called as 'Cascading Effect of Tax'.

Question 5

State the necessary pre-conditions for levy of Goods and Services Tax (GST) on goods and services.

Answer

The following conditions are required to be satisfied for a transaction to be chargeable to Goods and Services Tax, 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 6

What is GST Composition Scheme? What is the GST Composition Scheme Limit?

Answer

GST Composition Scheme is a tax paying mechanism offered to small businesses. When compared to normal GST filing, the Composite Scheme offers two main benefits i.e., reduced paperwork and compliance, & lower tax liability.

The Composition Scheme limit under GST varies depending on the type of business:

- **For manufacturers and traders:** As a newly registered business, the turnover should not exceed Rs.1.5 crores in the current financial year. If a taxpayer has already registered, then the turnover must not exceed Rs.1.5 crores in the previous financial year.
- **For restaurants not serving alcohol:** The above terms apply here as well.
- **For service providers:** As a newly registered business, the turnover should not exceed Rs.50 lakhs in the current financial year. If a taxpayer had already registered, then the turnover must not exceed Rs.50 lakhs in the previous financial year.

Additionally, Rs.1.5 crores cap is further limited in Special Category States to Rs.75 lakhs. Further, in the event that the turnover exceeds the specified composition scheme limit in a financial year, they will have to convert to the regular GST payment mechanism in order to comply with the GST Composition Scheme Rules.

Question 7

Mrs. X has opted for composition scheme at the time of registration and purchased a plant and machinery Rs. 30,00,000 and paid input tax at a rate of 18% and tax credit was not allowed but after a period of 9 months and 10 days the dealer has opted for payment under normal scheme. Compute amount of tax credit allowed to Mrs. X.

Answer

Total Input Tax (Rs. 30,00,000 x 18%) = Rs. 5,40,000

Asset already used for 9 months and 10 days = 4 Quarters

Less: Tax credit not allowed [Rs. 5,40,000 x (4 x 5%)] = Rs. 1,08,000

Amount of Tax credit allowed (Rs. 5,40,000 – Rs. 1,08,000) = Rs. 4,32,000

Question 8

From the following details pertaining to Ash, a registered dealer engaged in purchase and sale of goods, ascertain the GST liability (SGST/CGST/IGST) for the month of September, 2022:

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

<i>Weighment charges, shown separately in invoices</i>	<i>9,500</i>
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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>
<i>CGST</i>	<i>9%</i>
<i>SGST</i>	<i>9%</i>
<i>IGST</i>	<i>18%</i>

Answer

Determination of GST Liability of Ash for the month of September, 2022:

<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
Total	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:

- As per Section 15(2)(c) of the Central Goods and Services Tax Act, 2017, all incidental expenses like commission, packing & forwarding, weighment charges form part of the taxable supply.
- 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.

It is also assumed that the transaction is an intra-state supply. Hence CGST and SGST has been charged.

Question 9

Mrs. X acts as a referee in a Basketball match organized by Sports Authority of India. She has also acted as a referee in another charity Basketball organized by a local sports club, in lieu of a lump sum payment. Discuss whether she is required to pay any GST.

Answer

Services provided to a recognized sports body by an individual inter alia as a referee in a sporting event organized by a recognized sports body is **exempt** from GST.

Since in the first case, the Basketball match is organized by Sports Authority of India, which is a recognized sports body, services provided by Mrs. X as a referee in such Basketball match will be exempt.

However, when She acts as a referee in a charity Basketball match organized by a local sports club, She would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and Thus, GST will be payable in that case.

Question 10

Comment on the applicability of GST in the following independent cases-

- i) Religious pilgrimage organized by Ganjumaal Charitable Trust.*
- ii) Transportation of Milk*
- iii) Transportation of books on a consignment transported in a single goods carriage for Rs. 7,000.*
- iv) Transportation of chairs for a single consignee in the goods carriage for Rs. 900.*
- v) Services provided by way of vehicle parking to general public in a shopping mall.*
- vi) Services provided by a business facilitator to an insurance company in an urban area.*
- vii) Milling of paddy into rice.*
- viii) Services provided by the State Governments and Private Service Providers by way of transportation of patients in ambulance.*
- ix) Services by way of slaughtering of animals.*
- x) Transportation of passengers by non-air-conditioned railways.*

Answer

- i) GST is payable as religious pilgrimage organized by Ganjumaal Charitable Trust is taxable.
- ii) GST is not payable as the transportation of milk by goods transport agency is exempt. GST is payable as the exemption is available for transportation of goods only where the consideration for transportation of goods on a consignment transported in a single goods carriage does not exceed Rs. 1,500.
- iii) GST is payable as the transportation of goods where consideration for transportation of all goods for a single consignee does not exceed Rs. 750 is exempt.
- iv) GST is payable as the services provided by way of vehicle parking to general public are not exempt from GST.
- v) GST is payable as the services provided by a business facilitator to an insurance company in an urban area is not exempt from GST.
- vi) GST is payable as the milling of paddy into rice on job work basis, is liable to GST at the rate of 5% on the processing charges (and not on the entire value of rice).

vii) GST is not payable as the services provided by the State Governments and Private Service Providers by way of transportation of patients in ambulance is exempt from GST. [Entry 74 of Notification No. 12/2017-Central Tax (Rate)]

viii) GST is not payable as the services by way of Slaughtering of animals are exempt under GST. [Entry 56 of Notification No. 12/2017-Central Tax (Rate)]

ix) GST is not payable as Transportation of passengers by non-air-conditioned railways is exempt under GST.

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 donot 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 Integrated Tax (Rate) 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, 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 Central Tax (Rate) dated 28.06.2017. Thus, Mr. Bhudev will not be liable to pay GST on such commission. Instead, the insurance company will pay tax under reverse charge on this particular transaction.

Question 13

What is Reverse Charge Mechanism under GST?

Answer

Reverse Charge Mechanism is the process of payment of GST by the receiver instead of the supplier. In this case, the liability of tax payment is transferred to the recipient/receiver instead of the supplier.

Section 9(3) of Central Goods and Services Tax (CGST) Act, 2017 provides that "The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."

Section 9(4) of Central Goods and Services Tax (CGST) Act, 2017 provides that "The

Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”

Question 14

Whether payment of sitting fees to Directors covered in the provisions of reverse charge?

Answer

Yes. Sitting fee to Directors is covered under reverse charge as per Serial No. 6 of the Notification No. 13/2017-Central Tax Rate dated June 28, 2017, as amended, as the said services are outside the purview of employer-employee relationship. Therefore, the company paying such amount shall discharge the liability under Reverse Charge Mechanism.

Lesson 2

Supply

Supply under GST, Time of Supply, Value of Supply, Other Provisions -Job Work, Pure Agent, E-Commerce, TCS and Anti-Profiteering Measures

Question 1

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

Answer

A taxable event is any transaction or occurrence that results in a tax consequence. 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, 2017?

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

How to calculate Goods and Services Tax (GST)?

Answer

GST can be calculated simply by multiplying the Taxable amount by GST rate. If CGST & SGST/UTGST is to be applied then CGST and SGST both amounts are half of the total GST amount.

Goods and Services Tax = Taxable Amount x GST Rate

If you have the amount which is already including the GST then you can calculate the GST excluding amount by below formula

GST excluding amount = GST including amount / (1 + GST rate/100) For example, GST including

amount is Rs. 525 and GST rate is 5%. GST excluding amount = $525/(1+5/100) = 525/1.05 = 500$

GST is calculated on the transaction amount and not on the MRP

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 Central Goods and Services Tax 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, 2017 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) of the CGST Act, 2017 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

State which of the following is composite supply or mixed supply under the GST law:

- (i) *Sale of car with warranty coverage.*
- (ii) *Gift pack with chocolates and books.*
- (iii) *Sale of Refrigerator with power stabilizer.*
- (iv) *Hotel Star providing accommodation with complimentary breakfast.*

Answer

Composite Supply or Mixed Supply

(i) Composite Supply: Sale of car with warranty coverage is a composite supply as both supplies are naturally bundled and sale of car is a principal supply.

(ii) Mixed Supply: Gift pack with chocolates and books are not bundled due to natural necessities and hence they are mixed supply.

(iii) Mixed Supply: Refrigerator and power stabilizer are not inseparable and are not bundled due to natural necessities. They are mixed supply.

(iv) Composite Supply: Hotel Star providing accommodation with complimentary breakfast is a composite supply as the principal supply is supply of service i.e. accommodation.

Question 6

What is Deemed Supply? Explain with examples.

Answer

Deemed Supply means event or transaction where no or inadequate consideration is received for the supply of goods or services.

Schedule I under Central Goods and Services Tax Act, 2017:

Activities to be treated as Supply even if made Without Consideration

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

For Example:

i.) Mr. A, who sells Air Conditioner (AC). He transfers 1 AC from stock in trade to his home for personal use would constitute as Supply.

ii) Scrap of machinery destroyed by fire handed over to insurance company for settlement of claim. Since, ITC has been availed so, when the machinery destroyed by fire is handed over to insurance company in return for insurance compensation, it is a supply of goods.

2. 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:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

As per section 2(88) “Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

As per 2(5) of CGST Act, 2017 “Agent” means a person including a factor, broker, commission agent, arhatia, del-credre agent, an auctioneer or any other mercantile agent by whatever name

called who carries on supply or receipt of goods or services or both on behalf of another.

4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

For example: X Ltd USA is the holding company of Y Ltd. India. Y Ltd. imports business consultancy services from A Ltd. in the course or furtherance of business then the aforesaid importation of service shall fall within the ambit of term “Supply” and Y Ltd. shall be liable to pay IGST.

Question 7

ABC 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 ABC Ltd., since they are not a Goods Transport Agency, for 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 ABC Ltd through various Service Suppliers. In their opinion transportation services provided by non GTA is exempt from tax. ABC 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 , 2017 as Composite Supply, and the consideration receivable on that account be taxed at the rate at principal supply is taxed.

Question 8

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 pharmaceutical company supplies free samples to doctors.*

- c) *Vishnu 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.*
- d) *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.*

5.

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) The answer to 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 be treated as supply.**
Therefore, GST will not be levied on free samples distributed, because it is not considered as a supply. However, ITC on such purchases are not allowed to supplier.
- c) Renting of community hall by Vishnu 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, 1961 . 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.
- d) 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 9

SARAL Ltd. supplied goods to SHIVA Ltd. The terms of the contract stipulated that goods are delivered to the factory of SHIVA Ltd. Goods were removed from the factory of SARAL Ltd. on September 9, 2021 and were delivered to the factory of S Ltd. on September 15, 2021. Now, the invoice was issued on September 18, 2021 and payment was credited to SARAL Ltd.'s account on October 20, 2021. However, the entry was made in the books when the cheque was received, that is on September 19, 2021.

Determine the Time of Supply?

Answer

Time of supply

As per Section 12(1) of Central Goods and Services Tax Act, 2017, the time of supply of

goods shall be the earlier of the following dates, namely:—

- (a) the date of issue of invoice by the supplier or the last date on which he is required to issue invoice under section 31 of Central Goods and Services Tax Act, 2017; or
- (b) The date on which the supplier receives the payment with respect to the supply.

However, advance received in respect of supply of goods is not liable to be taxed at the time of receipt vide Notification No. 66/2017 Central Tax dated 15.11.2017. Therefore, the date of payment in respect of supply of goods shall not be relevant for determining the time of supply. Further, Section 31 of the Central Goods and Services Tax Act, 2017 provides that a registered person supplying taxable goods shall issue a tax invoice, before or at the time of, —

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods;

or

- (b) Delivery of goods or making available thereof to the recipient, in any other case. As per the above scenario, various dates are as under:

- Actual date of issue of invoice: September 18, 2021
- Due date for issue of invoice: September 9, 2021 (as supply involves movement of goods)
- Date of receipt of payment: September 19, 2021 (earlier of entry in books of accounts and credit made in the bank account)

Therefore, as per rule, the time of supply would be the earliest of the above dates, that is, September 9, 2021.

Question 10

Are self-supplies taxable under GST?

Answer

Inter-State self-supplies such as stock transfers, branch transfers, or consignment sales shall be taxable under Integrated Goods and Services Tax even though such transactions may not involve the payment of consideration. However, Intra-State self-supplies are not taxable subject to not opting for registration as a business vertical.

Question 11

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 12

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 CGST Act, 2017.
- 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 CGST Act, 2017.
- 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.

Question 13

Mr. Shyam Ahuja, an unregistered famous author, received Rs. 3 crores of consideration from Har Shiv Publications (HSP) located in Indore for supply of services by way of temporary transfer of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works of his new book. He finished his work & made available the book to the publisher, but has yet not raised the invoice. Mr. Shyam Ahuja is of the view that HSP is liable to pay tax under reverse charge on services provided by him. HSP does not concur with his view and is not ready to deposit the tax under any circumstances.

Examine whether the view of Mr. Shyam Ahuja is correct. Further, if the view of Mr. Shyam Ahuja is correct, What is the recourse available with Mr. Shyam Ahuja to comply with the requirements of GST law as HSP has completely refused to deposit the tax.

Answer

Yes, the view of Mr. Shyam Ahuja is Correct.

GST is payable under reverse charge in case of supply of services by an author by way of transfer/permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary work to a publisher located in the taxable territory in terms of reverse charge Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017. Therefore, in the given case, person liable to pay tax is the publisher – HSP. However, since HSP has completely refused to deposit the tax on the given transaction, Mr. Shyam Ahujah has an option to pay tax under forward charge on the same.

For the purpose, he needs to fulfill the following conditions:

- (i) since he is unregistered, he has to first take registration under the CGST Act, 2017;
- (ii) he needs to file a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) of the CGST Act and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;
- (iii) he has to make a declaration on the invoice, which he would issue to HSP, in prescribed form.

Question 14

What is National Anti-Profitteering Authority (NAA)?

Answer

The National Anti-profitteering Authority (NAA) was established under section 171 of the Central Goods and Services Tax Act, 2017. The NAA was set up to monitor and to oversee whether the reduction or benefit of input tax credit is reaching the recipient by way of appropriate reduction in prices.

National Anti-profitteering Authority (NAA) is therefore primarily constituted by the central government to analyse whether input tax credits availed by any registered person or the reduction in the tax is passed onto the consumer and he/she is protected from random price increase for self-interests in the name of GST.

The primary aim of the National Anti-profitteering Authority is to ensure the benefits of reduction or lower taxes under the new GST regime are passed onto the end consumers. Which is to determine that if any reduction in the rate of tax on supply of goods or services is passed onto the final recipient by way of proportional reduction in prices. Apart from this, the NAA also has to identify registered people/entities who have not passed on the benefit of a reduction in the rate of tax by means of ITC and bring them to task.

Question 15

Shyam Enterprises had made supplies of Rs. 5,50,000 to B Enterprises. Municipal Authorities of Jaipur on such supplies levied the tax @ 10% of Rs. 55,000. CGST and SGST chargeable on the supply was of Rs. 66,000. Packing charges not included in the price of Rs.5,50,000 amounted to Rs. 15,000. Subsidy of Rs. 25,000 was received from an NGO on the sale of such goods and the price of Rs. 5,50,000 is after taking in to account the amount of subsidy so received. Discount offered is @ 1% which was mentioned on the invoice.

Determine the value of supply.

Answer

	Particulars	Amount (Rs.)	Amount (Rs.)
	Price Charged		5,50,000
Add :	Tax Charged by municipal authorities (Section 15(2)(a) of CGST, Act, 2017)	55,000	
	Packing Charges (Section 15(2)(c) of CGST, Act, 2017)	15,000	
	Subsidy from NGO (Section 15(2)(e) of CGST, Act, 2017)	25,000	
	Total		95,000
Less :	Discount @1% (Section 15(3)(a) of CGST, Act, 2017)		(5,500)
	Value of Supply		6,39,500

Notes :

1. CGST and SGST is not included in the determination of value of supply, rather taxed post determination on the same.

2. Subsidy since received from a non-governmental body is added back to determine the value of supply.
3. Discount on basic price is an exclusion.

Question 16

Who is a Pure Agent in GST?

Answer

Pure agent as a person includes a factor, broker, commission agent, arhatia, del credere agent, an auctioneer, or any other mercantile agent, by whatever name called, who carries on the business of supply of goods or services or both on behalf of another person.

A pure agent under GST is defined as a taxable person who:

- Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services, or both
- Neither intends to hold nor holds any title to the goods or services, or both, so procured or supplied as pure agent of the recipient of supply
- Does not use for his own interest such goods or services so procured.
- Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account

Example of Reimbursement by Pure Agent :

Mr. X purchases furniture from Mr. Y for Rs. 1,50,000 and requests Mr. Y to deliver the same to his office. Mr. Y who has a retail furniture shop does not himself undertake services of delivery of furniture.

On special request of Mr. X, Mr. Y agrees to deliver the furniture to Mr. X's office by hiring a transporter. The actual charges paid to the transporter (Rs. 10,000) would be reimbursed by Mr. X to Mr. Y.

In the above mentioned example, the arrangement between Mr. X and Mr. Y is only for sale of furniture for Rs. 1,50,000. The amount paid by Mr. Y to the transporter (Rs. 10,000) is on behalf of the Mr. X which would be reimbursed on actual basis and this does not form a part of the contract.

Therefore, in the above mentioned example:-

1. The sale of furniture by Mr. Y to Mr. X for Rs. 1,50,000 is on a principal to principal basis.
2. The expenses for transport of furniture incurred by Mr. Y on behalf of X and reimbursed by X would be considered as pure agent service. (Rs. 10,000)

However, if the agreement between Mr. X and Mr. Y was for sale as well as delivery of furniture for Rs. 1,60,000, in such a case – Mr. Y would be availing the services of the transporter for his own interest and therefore he would be not considered as a pure agent in this case.

For the purpose of determination of pure agent service, it is pertinent to observe that the person who provides any service as a pure agent should only be reimbursed for the actual amount which was incurred as an expense.

Therefore in the above mentioned example, if the amount paid by Mr. X to Mr. Y as reimbursement for transport of furniture is more than Rs. 10,000, then this would not be considered as a case of pure agent. In such a case, the amount paid would be included in the sale price of the furniture.

Question 17

Mrs. Gogoi received vastu consultancy services for her residence located at Sector-62, Noida from her daughter Ms. Siya of Sydney (Australia). Further, Mrs. Gogoi did not pay any consideration for the said service.

Examine whether the activity of import of service would amount to supply under section 7 of the CGST Act, 2017?

Answer

Section 7 of the Central Goods and Services Tax Act, 2017 read with Schedule I provides that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business.

In the given case, import of service without consideration by Mrs. Gogoi from her daughter – Ms. Siya [daughter, being member of the same family, is a related person] will not be treated as supply as it is not in course or furtherance of business.

Question 18

Mrs. Ridhima had a factory situated in Delhi which he transferred to Uttar Pradesh, and closed all operations in Delhi. Whether it will constitute slump sale and whether it is liable to tax under GST?

Answer

Section 7 of the Central Goods and Services Tax Act, 2017 provides that the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Entry No. 4 (c) of Schedule II to the CGST Act refers to 'transfer of business assets' which reads as under:

“4. Transfer of business assets

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless —

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.”

This clarifies that the transfer of business as a going concern shall not be treated as 'supply of goods'. Further, Sl. No 2 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 provides exemption for "Services by way of transfer of a going concern, as a whole or an independent part thereof" as NIL rated. Hence, the transaction of slump sale is not liable to GST.

Lesson 3

Input Tax Credit & Computation of GST Liability

Input tax credit (ITC), Eligibility & Conditions for taking ITC, Transitional Provisions in ITC, Apportionment of Credit and Blocked Credits, ITC on Job Work and Input Service Distributor

Question 1

Explain the mechanism under the Central Goods and Services Tax Act, 2017 for claiming Input Tax Credit while making payment of Taxes.

Answer

Eligibility and Conditions for taking Input Tax Credit (ITC)

General Power to take credit [Section 16(1) of CGST Act, 2017]: 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.

Input tax credit as may be allowed shall be credited to the electronic credit ledger of such person.

Conditions for taking credit [Section 16(2) of CGST Act, 2017]:

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 of CGST Act, 2017, 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 of CGST Act, 2017.

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 the 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) of CGST Act, 2017 - 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) of CGST Act, 2017-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 Thirtieth day of November of financial year to which such invoice or invoice debit note pertains or furnishing of the relevant annual return, whichever is earlier

ITC can be availed only on matching of invoices w.e.f. January 01, 2022:

Input Tax Credit shall not be available to the registered person unless such invoices/debit notes have been reflected in GSTR-2B of the said person. Central Goods and Services Tax Rule 36(4) is amended to remove 5% additional ITC over and above ITC appearing in GSTR-2B. From January 01, 2022, businesses can avail ITC only if it is reported by supplier in GSTR-1/ IFF and it appears in their GSTR- 2B.

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, 2022:

Sr. No.	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. You 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, 22 after availing the Input Credit.

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.*

Answer

1. Calculation of Outward Tax Payable by Nargis Agro Traders on the sales during July, 2022.

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
Outward Tax Payable			34,200

2. Calculation of Input Tax Credit available on Inward Supplies

Item	Value in Rs.	Rate	Tax in Rs.
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

- (i) By debiting electronic credit ledger - Rs. 32,600
- (ii) By debiting electronic cash ledger Rs. 1600
- (iii) Due date for payment of tax shall be 20th of August 2022.

Question 3

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 2021:

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 :

Unit	Turnover (Rs.)
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, 2017 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, 2022 is detailed as below;

Particulars	Credit to be distributed (Amount in Rs.)			
	Total Credit	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 1)	1200000	600000	360000	240000
Total	1500000	900000	360000	240000

Note 1: 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 4

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, 2017 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 5

M/s X Ltd., a registered supplier from Maharashtra is engaged in the manufacturing of passenger auto. The company provides the following details of purchase made/services availed by it during the month of March 2022:

S. No.	Particulars	Amount (Rs.)
i)	<i>Purchase of iron which is used as a raw material (Goods were received in two instalments, first on in March 2021 and the second instalment was received in April 2021).</i>	2,50,000
ii)	<i>Purchase of accessories which were delivered directly to the dealers of the company. Only invoice was received by X Ltd.</i>	90,000
iii)	<i>Purchase of Bus (seating capacity 15) for the transportation of employees from their residence to company and back.</i>	1,97,000
iv)	<i>Input tax credit on general insurance taken on a car used by Executives of the company for official purposes.</i>	5,200

v)	Payment made to M/s XYZ Caterers for providing daily breakfast & lunch to the employees of the company, as voluntary staff welfare measure.	54,700
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You are required to determine the eligible Input Tax Credit available to M/s X Ltd. for the month of March 2022, by giving brief explanations for treatment of various items.

Subject to the information given above, all the other conditions necessary for availing input tax credit have been fulfilled.

Answer

Computation of eligible tax credit to M/s X Ltd. for the month of March, 2022

S. No.	Particulars	Amount (Rs.)
i)	Purchase of iron which is used as a raw material (Refer Note (i))	Nil
ii)	Purchase of accessories which were delivered directly to the Dealers of the company. Only invoice was received by X Ltd. (ITC is allowed)	90,000
iii)	Purchase of Bus (seating capacity 15) for the transportation of employees from their residence to company and back (ITC is allowed) (Refer Note (ii))	1,97,000
iv)	Input tax credit on general insurance taken on a car used by Executives of the company for official purposes.	Nil
v)	Payment made to M/s XYZ Caterers for providing daily breakfast & lunch to the employees of the company, as voluntary staff welfare measure (Refer Note (iii))	Nil
	Total	2,87,000

Notes:

(i) As per Section 16(2) of the CGST Act, 2017, If the goods are received in instalments, tax credit shall be allowed only when last instalment has been received. In the given case last instalment is received in April 2021 hence credit shall be allowed in the month of April.

(ii) As per Section 17(5) of the CGST Act, 2017, ITC of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) is not allowed in the given case bus is of 15 seating capacity.

(iii) As per Section 17(5) of the CGST Act, 2017, ITC of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance is not allowed.

Question 6

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) of the CGST Act, 2017 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.

Question 7

Mr. Anant owns a grocery shop. He rents a 2-storey building and uses the ground floor for his shop and 1st floor of the same building as residence. Mr. Anant also has an attached land where he grows vegetables and sells them in his shop.

The same property or common property is used for 3 separate reasons- taxable sales, exempted sales (vegetable) and personal expenses (residence).

Calculate Common Credit for Mr. Anant?

Figures for the month of September, 2020 are as follows :

Total ITC for the month of September 2020 = Rs. 1,00,000 (T) Value of taxable items sold in his shop = Rs. 5,00,000 (F)

Value of vegetables sold (Agricultural activity) = Rs. 2,00,000 (E)

Input Tax for inputs (transporting charges) for taxable items = Rs. 10,000 (T4)

Input Tax for inputs exclusively for agricultural activity (purchasing seeds, soil, labour charges) = Rs. 20,000 (T2)

Input Tax for inputs exclusively for personal purpose (eating out) = Rs. 5,000 (T1)

Input Tax for inputs and services on which availing credit is not eligible (travelling by Ulbera to wholesalers) = Rs. 10,000 (T3)

Answer

Businesses often use the same assets and inputs for both business & personal use. A business may have an inward supply of input goods, input services and capital goods. Further, the inward goods and services may be used for personal purpose or business purpose. The total input tax credit available on all such purchases is called **Common Credit** under GST. The taxpayer cannot claim the credit on the inputs used for personal purposes. Thus, the common credit should be utilized proportionately while making payment of output tax liability.

Calculation of Common Credit for Mr. Anant :

Step (i) : Calculation of total eligible ITC

Available Credit (C1) = Total ITC – [ITC for personal supplies + ITC for exempted supplies + Non eligible ITC]

Total ITC of Mr. Anant (T) = Rs. 1,00,000

ITC for personal supplies (T1) = Rs. 5000

ITC for exempted supplies (T2) = Rs. 20,000

Non eligible ITC (T3) = Rs. 10,000

C1 = T- (T1 + T2 + T3)

= Rs. 1,00,000 – (Rs. 5,000 + Rs. 20,000 + Rs. 10,000)

$$= \text{Rs. } 1,00,000 - (\text{Rs. } 35,000)$$

$$= \text{Rs. } 65,000$$

This Rs. 65,000 is total eligible credit which will be credited to electronic credit ledger.

Step (ii) : Calculation of ITC pertaining to personal supplies and exempt supplies

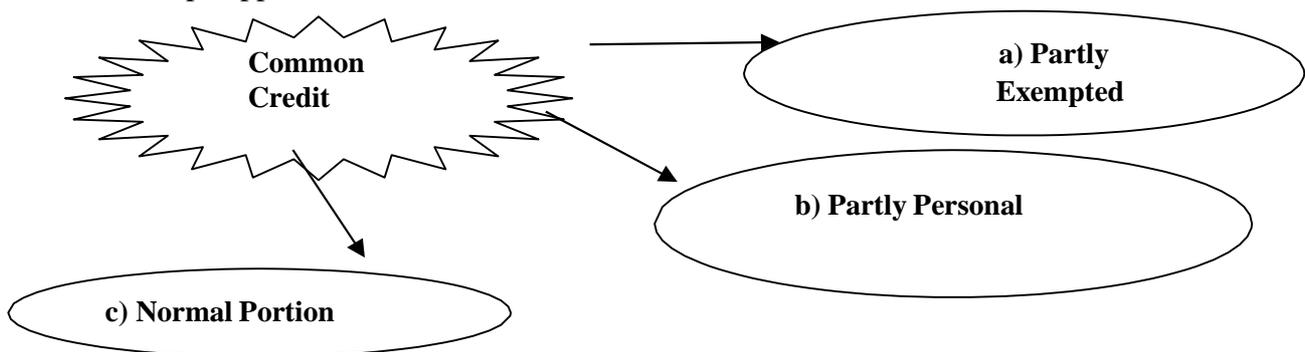
Common Credit (C2) = Input Tax credited to Electronic Credit Ledger (C1) – Input Tax for taxable supplies (T4)

Input Tax for inputs (transporting charges) for taxable items = Rs. 10,000 (T4)

$$= \text{Rs. } 65,000 - \text{Rs. } 10,000$$

$$= \text{Rs. } 55,000$$

This Common Credit is to be shared between taxable supplies, personal supplies and exempt supplies.



a) Partly Exempted

ITC pertaining to exempted supplies

The amount of input tax credit attributable towards exempt supplies, be denoted as ‘D1’ and calculated as-

$$D1 = (E \div F) \times C2$$

where,

‘E’ is the aggregate value of exempt supplies during the tax period, and

‘F’ is the total turnover in the State of the registered person during the tax period:

$$D1 = (\text{Rs. } 2,00,000 \div \text{Rs. } 5,00,000) \times \text{Rs. } 55,000$$

$$= \text{Rs. } 22,000$$

b) Partly Personal

There are many common expenses such as rent, electricity, water bill which are used for both business & personal purposes. This formula will help to segregate the amount of credit that pertains to personal purposes.

D2 = 5% of Common Credit

$$= 5\% \text{ of Rs. } 55,000$$

$$= \text{Rs. } 2,750$$

c) Normal Portion

The portion of common credit that pertains to the taxable supplies (such as rent portion for the shop). C3 = Common Credit – [ITC portion for exempted supplies (D1) + ITC portion for personal supplies(D2)]

= Rs. 55,000 – (Rs. 22,000+ Rs. 2,750)

= Rs. 30,250

Step (iii): Calculation of total ITC Mr. Anant can claim

Total eligible ITC for the month of September = ITC for normal supplies + Common credit for normal supplies

= Rs. 10,000 + Rs. 30,250

=Rs. 40,250

Question 8

Royal Company Ltd. of Mysore is a manufacturer and registered supplier of machine. It has provided the following details for the month of July, 2021.

Details of GST paid on inward supplies during the month:

Particulars	GST paid (Rs.)
<i>Health insurance of factory employees as required by Factory Act</i>	<i>20,000</i>
<i>Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.</i>	<i>18,000</i>
<i>Work contractor's service used for installation of plant and machinery.</i>	<i>12,000</i>
<i>Purchase of manufacturing machine directly sent to job worker's premises under challan.</i>	<i>50,000</i>
<i>Purchase of car used by director for the business meetings only.</i>	<i>35,000</i>
<i>Outdoor catering service availed for business meetings.</i>	<i>18,000</i>

Royal Company Ltd. also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Receipts on outward supply (exclusive of GST) for the month of July, 2021 are as follows:

Items	Outward Supply (Rs.)
<i>Hiring receipts for machine</i>	<i>5,25,000</i>
<i>Service charges for supply of man power operators</i>	<i>2,35,000</i>

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

- 1. Sale of machine 5%*
- 2. Service of hiring of machine 12%*
- 3. Supply of man power operator service 18%*

Compute the amount of Input Tax Credit available and also the net GST payable for the month of July 2021 by giving necessary explanations for treatment of various items. If Opening balance of input tax credit is Nil.

Answer

Computation of ITC Available:

Particulars	GST (Rs.)
Health insurance of factory employees (W. N. 1)	20,000
Raw material received in factory (W.N.2)	Nil
Work's contractor's service used for installation of plant and machinery (W.N.3)	12,000
Manufacturing machinery directly sent to job worker's premises under challan (W.N.4)	50,000
Purchase of car used by director for business meetings only (W.N.5)	Nil
Outdoor Catering Service available for business meetings(W.N.6)	Nil
Total ITC Available	82,000

Working Notes:

1. Health Insurance is obligatory under Factories Act. Hence, ITC is allowed.
2. Inputs or capital goods received in instalments- Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment - first proviso to section 16(2) of CGST Act.
3. As per section 17(5)(c) of the CGST Act, 2017, ITC shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.
In this case ITC will be allowed because here, such services are being used for installation of Plant and Machinery.
4. Section 19 of the CGST Act, 2017 provides that the principal (a person supplying taxable goods to the job worker) shall be entitled to take the credit of input tax paid on inputs sent to the job- worker for the job work.
5. Under section 17(5) of CGST Act, there are certain supplies on which input tax credit under GST is not available. These supplies can also be said as blocked credit.
Section 17(5)(a) of the CGST Act, 2017.

Motor Vehicle for transportation of person having approved seating capacity of not more than 13 persons

Except when used for:

1. Further Supply of Vehicles
2. Transportation of passenger (transport Agency)
3. For Training Classes
6. Section 17(5)(b)(i) of CGST Act, 2017 provides that ITC on outdoor catering is under blocked category.

Computation of Gross GST liability

	Value received (Rs.)	Rate of GST	GST payable (Rs.)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST Liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the Central Goods and Services Tax Act, 2017.

Computation of Net GST payable by Royal Company Limited

Particulars	GST payable (Rs.)
Gross GST Liability	91,200
Less: ITC	(82,000)
Net GST Liability	9,200

Question 8

A company XYZ Limited has various segments which include supply of both exempt and taxable goods. In that case, whether reversal of ITC will be on segment wise basis or on whole company basis?

Answer

If different segments of XYZ Limited are registered individually then calculation for reversal should be done on the basis of segments. However, if single registration is taken by the company, then the company will prepare the calculations on whole basis. However, in any case involving different States, since different GSTIN have to be obtained, the reversal will have to be done on the basis of GSTINs only.

Lesson 4

Procedural Compliance under GST

Registration; Tax Invoice, Debit & Credit Note, Accounts and Records, Electronic way Bill, Payment of Tax, Returns & Forms, Refund, Compliance Rating

Question 1

Write a short note on Suspension of GST Registration based on return comparison?

Answer

GST Officers will immediately suspend registration of taxpayers whose sales return or GSTR – 1 forms show "significant differences or anomalies" from the return filed by their suppliers, a move aimed at curbing tax evasion and safeguarding revenues. The Central Board of Indirect Taxes and Customs (CBIC) has issued a Standard Operating Procedure (SOP) for suspension of registration of a person on observance of such discrepancies /anomalies which indicate violation of the GST Act.

Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations [Circular No. 145/01/2021- GST, dated February 11, 2021]

Sub-rule (2A) of rule 21A of the CGST Rules, 2017 provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of CGST Act and rules made thereunder; and that continuation of such registration poses an immediate threat to revenue. The registration of specified taxpayers shall be suspended and system generated intimation for suspension and notice for cancellation of registration in FORM GST REG-31, containing the reasons of suspension, shall be sent to such taxpayers at their registered e- mail address.

The taxpayers, whose registrations are suspended under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled.

Rule 21A of the Central Goods and Services Tax Rules, 2017 deals with the provisions governing the suspension of GST registration. It had been inserted into the CGST Rules 2019. With the introduction of this rule, a taxpayer who has applied for cancellation of GST registration will not be required to comply with GST return filing provisions during the suspension period.

Question 2

Zeb, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:

- a) *Whether Zeb is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?*
- b) *Zeb sells some exempted as well as taxable goods valuing Rs. 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?*
- c) *Zeb wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers. Advise Accordingly?*

Answer

- a) No, He is not required to issue tax invoice in all cases. As per Section 31(1) of the CGST Act, 2017, every registered person supplying taxable goods is required to issue a '**Tax invoice**'.

Section 31(3)(c) of the CGST Act, 2017 stipulates that every registered person supplying exempted goods is required to issue a **bill of supply** instead of tax invoice. Further, **Rule 46A** of the CGST Rules, 2017 provides that a registered person supplying taxable as well as exempted goods or services or both to an un-registered person may issue a single '**invoice-cum-bill of supply**' for all such supplies.

However, as per section 31(3)(b) of the CGST Act, 2017 read with rule 46 of the CGST Rules, 2017, a registered person may not issue a tax invoice if:

- i. Value of the goods supplied < Rs.200,
- ii. the recipient is unregistered; and
- iii. the recipient does not require such invoice.

Instead, such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

- b) As per rule 46A of the CGST Rules, 2017, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "**invoice-cum-bill of supply**" may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the taxable and exempted goods respectively.
- c) As per section 33 of the CGST Act, 2017 read with rule 46(m) of the CGST Rules, 2017, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. Hence, Zeb has to show the tax amount separately in the tax invoices issued to customers.

Question 3

Is it necessary for the foreign embassy's to get registration under CGST Act, 2017?

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, 2017 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 of the CGST Act, 2017 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, 2017) if no deficiency has been communicated to the applicant within that period. Moreover, a 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 4

What will be the value of supply of goods or services or both between distinct [section 25 (4) and (5) of CGST Act, 2017] 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 a 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 5

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 GSTREG-01	Separate application form for registration by non-resident taxable person viz GSTREG-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 6

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, a person paying tax under section 10 (composition scheme), Persons liable to deduct tax at source as per Section 51, Persons liable to collect tax at source as per Section 52 and Person providing OIDAR Services) 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 7

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 8

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 Rule 138 of the CGST Rules, 2017 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.	Upto 200 km.	One day in cases other than Over Dimensional Cargo
2.	For every 200 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

As per the notification No. 94/2020 dated December 22, 2020, the validity period of e-waybill will be changed from 100 KM per day to 200 KM per day from January 01, 2021.

Question 9

Mr. H 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.

- person in charge of the conveyance carrying the export goods duly files an export manifest or a departure manifest or an export report covering no. and date of shipping bills or bills of export; and
- the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR- 3B, as the case may be.
- The applicant has undergone Aadhaar authentication in the manner provided in Rule 10B.

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 of 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 10

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, 2017 “deemed exports” means such supplies of goods as may be notified under Section 147 of CGST Act, 2017.

Section 147 of the CGST Act, 2017 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-

Sr. No.	Description of supply
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Good 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.

Question 11

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 12

What are the situation under which E- Way bill is not required?

Answer

All GST registered business owners are bound to create e-way bills when they transport goods

from one place to another if the consignment value exceeds Rs. 50,000. However, there are several situations where the E-Way bill is not required and those situations are listed below.

As per provisions of rule 138 (14) of CGST Rules, no E-way bill is required to be generated under following situations:

1. E-way bill is not required to be generated when below-mentioned goods are being transported:

- Liquefied petroleum gas for supply to household and Non Domestic Exempted Category (NDEC) customers;
 - Kerosene oil sold under PDS;
 - Postal baggage transported by Department of Posts;
 - Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71);
 - Jewellery, goldsmiths and silversmiths wares and other articles (Chapter 71);
 - Currency;
 - Used personal and household effects;
 - Coral, unworked (0508) and worked coral (9601)
2. In case of transport of goods from customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs, E-way bill is not required.
3. When goods are being transported by a non-motorised conveyance, E-way bill generation is not required.
4. When following goods are being transported, the e-way bill is not required to be generated;
- Alcoholic liquor for human consumption
 - Petroleum crude
 - High-speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel
 - When there is no supply as per provisions contained in Schedule III of the Act, E-way bill is not required.
5. E-way bill is not required to be generated when the goods are being transported—
- under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - under customs supervision or under customs seal;
 - where the goods being transported are transit cargo from or to Nepal or Bhutan;
 - where the goods being transported are exempt from tax under various notifications;
6. When Central Government, State Government or a local authority acting as a consignor undertakes transport of goods by rail, no E-way bill is required.
7. When goods movement has been caused by defence formation under Ministry of defence as consignor or consignee, no E-way bill is required.
8. No E-way bill is required in case of transport of empty cargo containers.
9. In case goods are being transported for weighment purpose and the distance is not more than 20 Kms from the place of the business of the consignor to the

weighbridge or vice versa, E-way bill generation is not required. However, the movement of goods must be accompanied by a delivery challan.

10. When goods specified in schedule appended to notification no. 2/2017-Central Tax (Rate) dated 28.06.2017 is being transported, other than de-oiledcake, than in such case e-way bill is not required to be generated.

Lesson 5

Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision

Question 1

Who is the person responsible to make assessment of taxes payable under the CGST Act, 2017?

Answer

Every person registered under the CSGT Act, 2017 shall himself assess the tax payable by him for a tax period and after such assessment, he shall file the return required under section 39 of CGST Act, 2017. Self-Assessment will be the norm under GST.

As per section 39 of the CGST Act, 2017, the taxable persons other than ISD/TCS/TDS/Non-resident and composition levy tax persons shall for every calendar month or part thereof, furnish GSTR-3 Return electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as prescribed under GSTR 3 return format on or before the 20th day of the month succeeding the tax period (the month for which return is filed). Self-Assessment is a process whereby a person first assesses, tax payable by him, pays the tax and then files the return furnishing the details of how he has arrived at the tax payable by him. The assessment as made by the registered person would be treated as final.

Question 2

Under what circumstances can provisional assessment be done?

Answer

As a taxpayer has to pay tax on self-assessment basis, a request for paying tax on provisional basis has to come from the taxpayer which will then have to be permitted by the proper officer. This is governed by section 60 of CGST Act, 2017 and rule 98 of the CGST Rules. Tax can be paid on a provisional basis only after the proper officer has permitted it through an order passed by him. For this purpose, the taxable person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. Such a request can be made by the taxable person only in such cases where he is unable to determine:

- a) the value of goods or services to be supplied by him, or
- b) determine the tax rate applicable to the goods or services to be supplied by him.

In such cases, the taxable person has to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Question 3

Write a brief note on Summary Assessment?

Answer

Summary Assessment is stated under Section 64 of the CGST Act, 2017. The authorized office is required to obtain prior permission of additional commissioner or joint commissioner to take this assessment. To protect the interest of revenue, a GST officer can proceed to assess the tax liability of a person showing a tax liability with any evidence. The officer can also issue an assessment order id he has proof that the delay in assessment can adversely affect the interest of revenue.

Section 64 of the CGST Act, 2017 provides that:

The proper officer may, on any evidence showing a tax liability of a person coming to his

notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

Rule 100 (3): The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07**.

On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Rule 100 (4): The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT-17** (5): The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18**.

Question 4

Explain Audit under GST?

Answer

According to section 2(13) of CGST Act, the term “Audit” refers to the examination of:

- Records, returns, and other documents kept or filed by the registered person under the Act.
- Rules or guidelines under GST or any other law for the time being in force.

This examination is undertaken to check the correctness of the turnover mentioned, taxes paid, refund claimed and ITC availed. Further, this scrutiny is undertaken to evaluate the taxpayer’s compliance with the provisions of the Act.

Question 5

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, 2017 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 of the CGST Act, 2017 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 6

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

Answer

Section 79 CGST Act, 2017 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 are not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered;
- 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 7

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, 2017 the expression “authorized representative” shall mean a person authorized by the person referred to in section 116(1) of the CGST Act, 2017 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 8

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 9

Whether proceedings for rectification, appeal and revision, of any order passed by an officer appointed under CGST Act, 2017 can lie before an officer appointed under the SGST Act, 2017?

Answer

As per Section 6(3) of the CGST Act, 2017 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, 2017.

Question 10

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) of CGST Act, 2017. 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 11

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 12

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.

Lesson 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, 2017.

Section 67(2) of the CGST Act, 2017 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 CGST Act, 2017 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 CGST Act, 2017 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.

Question 4

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 5

What is a Search Warrant and what are its contents?

Answer

The written authority to conduct the search is generally called a 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 6

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 7

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, is denied.

Question 8

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 9

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 10

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 11

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 12

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

Answer

The Goods and Services Tax Authorities are empowered under section 69 of CGST Act, 2017 to arrest persons accused of offences specified under Section 132 of the CGST Act, 2017 ('CGST Act').

The Commissioner of CGST(Central Goods and Services Tax), by order, can authorize any CGST officer to arrest a person, if he has reasons to believe that such person has committed an offence specified in clause (a) or clause (b) or clause (c) or clause (d) of section 132(1) of CGST Act, 2017 which is punishable under clause (i) or (ii) of section 132(1) or section 132(2) of the CGST Act, 2017. This essentially means that a person can be arrested only when the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs. 1 Crore (imprisonment for a term up to 1 year with fine) or Rs. 5 Crores (imprisonment for a term up to 5 years with fine).

Section of CGST Act	Offence
132 (1)(a)	Supply of any goods or services or both without issue of any invoice in violation of the provisions of the Act or Rules with intent to evade tax.
132 (1)(b)	Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of the Act or Rules leading to wrongful availment or utilisation of input tax credit or refund of tax.
132 (1)(c)	Availment of input tax credit using the invoice or bill referred to in clause (b).
132 (1)(d)	Collection of any amount of tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

The word arrest usually comes within the realm of criminal jurisdiction.

Offences can be classified into 3 major categories:

1. Tax evasion
2. Wrong/ fraudulent availing of Input tax credit
3. Wrong/ fraudulent obtaining of Refund

The punishment for offences in Section 132 (a),(b), (c), (d) of CGST, 2017 where the quantum involved is more than 5 crore is cognisable and non-bailable. All other offences with lesser quantum are non-cognisable and bailable.

If the Commissioner of CGST/SGST believes a person has committed an offence u/s 132 of CGST Act, he can be arrested by any authorised CGST/SGST officer. The arrested person will be informed about the grounds of his arrest. He will appear before the magistrate within 24 hours of arrest in case of a cognizable offence.

Question 13

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

Answer

In section 132 of CGST Act, 2017 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 non-bailable. Other offences under the act are non-cognizable and bailable.

Question 14

When can the proper officer issue summons under CGST Act?

Answer

Section 70 of CGST/SGST Act, 2017 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 15

What can be the consequences of non-appearance to summons?

Answers:

The proceeding before the official who has issued the 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 16

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 to 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 a loss of revenue.

Question 17

What are the precautions to be observed while issuing summons?

Answer

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

- (i) A summons 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 the 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 the time and place of recording statements having regard to the facts in the case.

Question 18

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 of CGST Act, 2017, 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 collectable 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 19

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 20

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

Answer

Section 122(1) of CGST Act, 2017 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 than the following amounts:

- The amount of tax evaded, fraudulently obtained as a 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) of CGST Act, 2017 provides that any registered person who has not paid tax or makes a short payment of tax on supplies shall be liable to a penalty which will be the higher of:

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

Question 21

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

Answer

Yes. Section 122(3) of CGST Act, 2017 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 the 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 22

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 the 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 the value of goods or upon furnishing of security equivalent to the said amount.

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

Question 23

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 24

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

Answer

Under Section 130 of the CGST Act, 2017 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 25

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

Answer

Yes. Section 130 of CGST Act, 2017 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 26

What is Prosecution?

Answer

Prosecution is the institution or commencement of the legal proceedings; 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 27

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 28

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:

Offence involving	Punishment (Imprisonment extending to)
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
False records Obstructing officer Tamper records	6 months

Question 29

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, 2017 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 30

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 31

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 32

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.

Question 1

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 2

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 3

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.

Question 4

Can Government Officers be appointed as an Authorized representative?

Answer

Government officers as an authorized representative

Government officers can be appointed as an authorized representative but subject to clause (d) of section 116(2) of the GST Act, 2017 i.e. 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 can be appointed as authorized representative.

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.

Question 5

Who are the persons not qualified to act as an authorized representative?

Answer

Persons not qualified to act as an authorized representative

As per section 116(3) of the GST Act, 2017 following person shall not be qualified to act as an authorized representative:

- (a) who has been dismissed or removed from government service; or
- (b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- (c) who is found guilty of misconduct by the prescribed authority;
- (d) who has been adjudged as an insolvent,

Such disqualification to act as an authorized representative shall operate for the following period:

- Persons dismissed or removed from government – for all times
- Persons convicted of specified offences – for all times
- Insolvent persons – for the period during which the insolvency continues.

As per section 116(4) of GST Act, 2017, any person who has been disqualified under the provisions of the State Goods and Services Tax Act (SGST) or the Union Territory Goods and Services Tax Act (UTGST) shall be deemed to be disqualified under GST Act.

Consequences of being found guilty of any misconduct

As per Rule 116 of GST Rules, 2017 where an authorized representative (other than Advocate/CA/CS/CWA) is found, upon an inquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him with an opportunity of being heard, disqualify him from appearing as an authorized representative. **GST practitioner as an authorized representative**

As per section 116(2) (e) of the CGST Act, 2017, any person who has been authorized to act as a GST practitioner on behalf of the registered person can also act as an authorized representative.

Question 6

What are the recognitions to a Company Secretary under GST?

Answer

Company Secretary to act as Goods & Services Tax Practitioner (GSTP)

Section 48(1) of the Central Goods & Services Act, 2017 (CGST) provides for “the manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.”

Pursuant to Section 48 of CGST Act, 2017, read with Rule 83 of the Central Goods and Services Tax Rules, 2017, any person **who has passed the Final Examination of the Institute of Company Secretaries of India (ICSI)** is eligible for enrolment as a Goods & Services Tax Practitioner by making an application in **Form GST PCT-01** on the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment.

A Goods & Services Tax Practitioner is eligible to undertake the following tasks:

- a) furnish details of outward and inward supplies;
- b) furnish monthly, quarterly, annual or final return;
- c) make deposit for credit into the electronic cash ledger;
- d) file a claim for refund;
- e) file an application for amendment or cancellation of registration;
- f) furnish information for generation of e-way bill;
- g) furnish details of Challan in FORM GST ITC-04;
- h) file an application for amendment or cancellation of enrolment under rule 58; and
- i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

Company Secretary to represent before the Appellate Authority

Under Section 116 of Central Goods & Services Tax Act, 2017, read with Rule 84 of Central Goods & Services Tax Rules, 2017, a **Company Secretary is entitled to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal** in connection with any proceedings under this Act.

Question 7

What are the documents required for registering as a GST Practitioner?

Answer

Documents required for registration as a GST practitioner

- Enrolment type (Central or State application),
- Bar Council Membership Proof – For Advocates
- Date of enrolment,
- Photograph (jpeg-100kb),
- Valid e-mail id,

- Valid Phone number,
- Membership number and valid up to,
- Name of university/institute,
- Office address proof,
- A digital signature,
- Year of passing, and
- Qualification proof: Certificate of Practice – For Chartered Accountant, Company Secretary, Cost and Management Accountant, Bar Council Membership Proof – For Advocates,

Question 8

What is the difference between a taxpayer and a GST practitioner?

Answer

A taxpayer is a person registered under GST Act for the purpose of filing returns, payment of tax, availing input tax credit and other compliances. Such a person is defined as a ‘taxable person’ under GST Act. He is a **person** who carries on any business at any place in India and who is registered or required to be registered **under** the **GST** Act. Any **person** who engages in economic activity including trade and commerce is treated as **taxable person**.

On the contrary, a GST practitioner is a person registered as a GST professional under GST Act. A taxpayer may authorise a GST practitioner to furnish monthly/quarterly/ annual returns and information, on his behalf, to the government. The manner of approval of GST practitioners, the manner of removal, eligibility and qualification, roles and responsibilities and other conditions relevant for the functioning of a GST Practitioner have been prescribed in Rule 24 and 25 of the Return Rules. A taxable person can add a GST Practitioner to his GST Portal, to allow such a person to make compliance under GST on his behalf.

Question 9

Describe the Registration procedure for becoming GST Practitioner ?

Answer

GST practitioner is a government appointed person to handle all the tax-related activities on behalf of the taxpayer and business firms. The person appointed is liable for fresh registration under GST and applying for any amendment and cancellation of registration. He/She is liable to furnish all the monthly quarterly and annual return of the firm and payment of the taxes on behalf of the taxpayer. He/She is totally credible as well as liable for any legal proceeding of the company is to represent on all the matter.

Registration Procedure for becoming GST Practitioner :

STEP 1

Log on to the website www.gst.gov.in

STEP 2

Go to Services – Registration Click on ‘New Registration’

STEP 3

Click on 'New Registration' fill all the necessary details like select I am a GST Practitioner in the dropdown box.

Select State, District.

Enter Name, PAN, email address and mobile number. Enter the captcha code.

Click on "Proceed".

STEP 4

Now enter the OTP received on email and mobile number. Click on "Proceed".

STEP 5

TRN (Temporary Reference Number) will be generated. Click on "Proceed".

STEP 6

Enter TRN and Captcha. Click on "Proceed".

STEP 7

Enter all the details and upload documents in pdf and jpeg format. Click on 'Submit' in verification page.

Lesson 8

Integrated Goods and Services Tax (IGST)

Introduction, Need for IGST, Determination of Nature of Supply, Place of Supply of Goods or Services or Both, Refund of Integrated Tax to International Tourist and Zero Rated Supply

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

Rule 88A: Order of utilization of Input Tax Credit

Input Tax Credit on account of 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 Union territory tax, as the case may be, in any order:

Provided that the Input Tax Credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

The new order of ITC utilization Rule 88A of CGST, Rules 2017 is brought vide Notification No. 16/2019 dated March 29, 2019 made effective from April 1, 2019.

Liability	IGST	CGST	SGST/UTGST	Remarks
ITC-IGST	1 st	2 nd /3 rd	2 nd /3 rd	IGST liability will be settled off first compulsory and then free to use IGST Input in either of the payment CGST or SGST/UGST liability in any order.

Example :

Amount of Input tax Credit available and output liability under different tax heads

Head	Output Liability (Rs.)	ITC (Rs.)
Integrated Tax (IGST)	10000	13000
Central Tax (CGST)	3000	2000
State Tax/ Union Territory Tax (SGST/UTGST)	3000	2000
Total	16000	17000

Option 1 :

ITC on account of	Discharge of output liability on account of IGST (Rs.)	Discharge of output liability on account of CGST (Rs.)	Discharge of output liability on account of SGST/UTGS T(Rs.)	Balance of ITC(Rs.)
IGST	10000	2000	1000	0
Input Tax Credit on account of Integrated tax has been completely exhausted				
CGST	0	1000	0	1000
SGST/UTGST	0	0	2000	0
Total	10000	3000	3000	1000

Option 2 :

ITC on account of	Discharge of output liability on account of IGST (Rs.)	Discharge of output liability on account of CGST (Rs.)	Discharge of output liability on account of SGST/UTGS T(Rs.)	Balance of ITC(Rs.)
IGST	10000	1000	2000	0
Input Tax Credit on account of Integrated tax has been completely exhausted				
CGST	0	2000	0	1000
SGST/UTGST	0	0	1000	0
Total	10000	3000	3000	1000

Question 4

Define “export of goods” and “export of services”. How are exports 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 appointment 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 CGST or IGST Act, shall not be liable to registration.	A person exclusively making zero rated supplies may have to register as refund of utilized ITC or integrated tax paid shall 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.

Lesson 9

Union Territory Goods and Services Tax (UTGST)

Introduction, Determination of Nature of Supply, Fundamental difference between States and Union Territory, One Nation One Tax – Article 370 Scrapped, Illustrations on Levy of Tax

Question 1

Briefly discuss the provisions related to levy of UTGST.

Answer

UTGST: Union Territory Goods and Services Tax

It is levied & collected under the authority of UTGST Act, 2017 passed by the Parliament. This is applicable to Union Territories, i.e., Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu, Chandigarh and other territory. Jammu & Kashmir & Ladakh has been made union territories but for the time being J&K SGST Act is applicable. Dadra & Nagar Haveli & Daman & Diu are to be merged into a single Union Territory.

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, 2017.

Rates for UTGST are rates as notified by the Government on the recommendations of the GST Council.

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

Describe the impact of merger of Dadra & Nagar Haveli and Daman & Diu?

Answer

Merger of the Two Union Territories (UTs) Dadra & Nagar Haveli and Daman & Diu

A big step forward to recognize vision of 'minimum government, maximum governance' was taken by the Union Cabinet, approving the amendments/extension/repeal in abundant Acts and Regulations pertaining to Goods and Services Tax (GST), Value Added Tax (VAT) and State Excise of the two Union Territories i.e. of Dadra & Nagar Haveli and Daman & Diu, designating the Daman as the headquarters of the Union Territory.

On 3rd day of December, 2019 the Parliament passed the Dadra and Nagar Haveli and Daman and Diu Bill, 2019 for the merger of the two UTs and the appointed date of the said amendment was made effective from January 26, 2020.

The decision was taken with an aim to strengthen administrative efficiency and fast track the development for the citizens of these two UTs, apart from savings to government exchequer and guaranteeing consistency, stability and consistency in day to day working of tax authorities. Major impact on the existing laws by the decision of the Union Cabinet:

- The **Central Goods and Service Tax Act, 2017** will be amended by the Central Goods and Service Tax (Amendments) Regulation, 2020;
- The **Union Territory Goods and Service Tax Act, 2017** will be amended by the Union Territory Goods and Service Tax (Amendments) Regulation, 2020;
- The Dadra and Nagar Haveli Value Added Tax Regulation, 2005 will be amended by the **Dadra and Nagar Haveli and Daman and Diu Value Added Tax (Amendments) Regulation, 2020**;
- The Daman and Diu Value Added Tax Regulation, 2005 will be removed by the Daman and Diu Value Added Tax (Repeal) Regulation, 2020;
- The Goa, Daman and Diu Excise Duty Act, 1964 amended by the Dadra and Nagar Haveli and Daman and Diu Excise Duty (Amendment) Regulation, 2020,
- The Dadra and Nagar Haveli Excise Duty Regulation, 2012 will be withdrawn by the Dadra and Nagar Haveli Excise Duty (Repeal) Regulation, 2020.

This will prompt common tax authorities, better conveyance of services to citizens by lessening the duplication of work and improving administrative proficiency, help in acquiring consistency in laws related with GST, VAT and state excise and furthermore, maintain a strategic distance from any lawful inconveniences in the levy and collection of tax and duty, including recovery of arrears, and consolidate the system of laws under the same.

Question 3

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

Question 4

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, 2017 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>
IGST	IGST	CGST	SGST/UTGST
CGST	CGST	IGST	-
SGST/UTGST	SGST/UTGST	IGST	-

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

Lesson 10

GST Compensation to States

Introduction, Levy and Collection of Cess, Returns, Payments and Refunds, Input Tax Credit of Cess Paid, Compensation Cess on Goods Exported, Establishment of GST Compensation Fund, Provisions regarding Compensation Payable 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.

(GST Compensation Cess has been extended upto 31st March 2026 (Notification No. 01/2022-Compensation Cess dated June 24, 2022)

Link; <https://egazette.nic.in/WriteReadData/2022/236790.pdf>

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 of the Goods and Services Tax (Compensation to States) Act, 2017 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 of the Goods and Services Tax (Compensation to States) Act, 2017 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 of the Goods and Services Tax (Compensation to States) Act, 2017 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—

$$\text{Projected Revenue for 2018-19} = 100 (1 + 14/100)^3 = 48.15$$

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:

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

- a) 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 Act, 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 such cases. In such cases they cannot utilise the compensation cess paid on inputs for payment of IGST in view of the provisoto 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.

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 2(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 Special Economic Zones (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

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 4

Discuss the following:

- a) *Is it mandatory for e-commerce operator to obtain registration?*
- b) *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 [who is required to collect tax at source under section 52] 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 is 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 e-commerce 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 was 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 5

Briefly discuss Tax Collection at Source (TCS) provisions.

Answer

This provision is applicable only for E-Commerce Operators 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.

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 the 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, 1962.

Basic Customs Duty is also exempted upfront or through a 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 the 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 aluminium, 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 framework.
3. Other containers are insulated or refrigerated and are constructed according to International standards and inspected by Insurance companies.

Question 5

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 6

Distinguish between ‘‘First Appraisement and Second Appraisement.’’

Answer

First Appraisement 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 Appraisement 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 7

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 8

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 of Customs Act, 1962 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, 1962 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 of Customs Act, 1962</i>	<i>Transshipment of Goods u/s 54 of Customs Act, 1962</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 9

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 10

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.
- (i) The goods should be identified to the satisfaction of the AC/DC of Customs as the goods which were imported.
- (ii) 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 11

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

Answer

As per Section 80 of the Customs Act, 1962 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 12

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 has expected to charge under normal circumstances in the Indian market.

Question 13

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 14

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

Answer

Derelect – 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 aftership wreck.

Question 15

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

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

Answer

Computation of assessable value and total customs duty

Particulars	Amount (US \$)
<i>Cost of the machine</i>	10,000
<i>Add: Transport charges from the factory of the exporter, to the port for shipment</i>	400
<i>Add: Handling charges paid for loading the machine in the ship</i>	25
<i>FOB</i>	10,425
<i>Add: Freight</i>	2,500
<i>Add: Insurance (10425*1.125%)</i>	117
<i>Add: Lighterage charges</i>	100
<i>Add: Ship demurrage charges</i>	200
<i>CIF Value/Assessable value</i>	13,342

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 Appolo Tyres 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 16

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 17

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

Answer

Section 13 of Customs Act, 1962 covers the situation of "pilferage of the goods" and Section 23 of Customs Act, 1962 covers "loss of goods" and these are quite different as explained by the table below:

Basis	Section 13	Section 23
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 18

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 19

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, 1962.

<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

Question 20

What are the conditions which are to be satisfied for imposing countervailing duty on the subsidized articles as specified in section 9 of the Customs Tariff Act, 1962?

Answer

Section 9(1) of the Customs Tariff Act, 1975 -

The countervailing duty on subsidized articles is imposed, if the following conditions are satisfied:

- Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.
- Such articles are imported into India.
- The importation may/may not directly be from manufacture/ production.
- The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Section 9(3) of the Customs Tariff Act, 1975-

The countervailing duty shall not be levied unless it is determined that –

- the subsidy relates to export performance;
- the subsidy relates to the use of domestic goods over imported goods in the export article; or
- the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

Question 21

Assessable Value (A.V.) = Rs 1 lakh

(i) The BCD (basic custom duty) - 10 %.

(ii) IGST is payable - 12%.

(iii) Social Welfare Surcharge - 10%.

Calculate the total amount of duties and taxes?

Answer

Particulars	Amount (Rs.)	Amount (Rs.)
Assessable Value (A.V.)		1,00,000
Add: Basic Custom duty (10 % of Rs. 1,00,000)	10,000	

Social Welfare Surcharge (10 % of Rs. 10,000)	1,000	
Custom Duty	11,000	+11,000
Total value for levy of IGST		1,11,000
Add: IGST (12 % of 1,11,000)	13,320	+13,320
Total Cost		1,24,320
Total Custom Duty (Rs. 1,24,320 – 1,00,000)		24,320
