

MOCK TEST PAPER 1
FINAL (NEW) COURSE: GROUP – II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A

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|----|-----|-----|
| 1 | I | (b) |
| | II | (a) |
| | III | (d) |
| | IV | (b) |
| | V | (a) |
| 2 | I | (a) |
| | II | (b) |
| | III | (a) |
| | IV | (a) |
| | V | (c) |
| 3 | | (c) |
| 4 | | (b) |
| 5 | | (c) |
| 6 | | (b) |
| 7 | | (d) |
| 8 | | (c) |
| 9 | | (b) |
| 10 | | (b) |

Division B

1. Computation of net GST payable by Sahu Parivar for the month of May

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Output tax liability [Working Note 1]			4,87,800
Less: ITC of CGST [Working Note 2]			(37,000)
Less: ITC of SGST has been utilized only after ITC of CGST has been utilized fully in terms of proviso to section 49(5)(c) [Working Note 2]			(37,000)
Net GST payable from Electronic Cash Ledger			4,13,800

Working Note 1

Computation of output tax liability of Sahu Parivar for the month of May

Particulars	Amount (Rs.)
List price of 16 pumps (Rs. 1,60,000 x 16)	25,60,000
Add: Amount paid by AP Refinery to testing agency [Note 1(i)]	24,000
Add: Special packing [Note 1(ii)]	86,000
Add: Erection and testing at site [Note 1(ii)]	24,000
Add: Freight [Note 1(iii)]	<u>16,000</u>
Value of taxable supply	27,10,000
IGST @ 18% [Note 2]	4,87,800

Notes:

(1) As per section 15(2) of the CGST Act, 2017:-

- (i) Any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply, charges for the same, however, have been paid directly to the third party service provider by the recipient. Therefore, the value shall be included in taxable value.

- (ii) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of supply.

- (iii) Any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

(2) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Sambhra (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2

Computation of ITC available with Sahu Parivar for the month of May

Particulars	CGST @ 2.5% (Rs.)	SGST @ 2.5% (Rs.)
Opening ITC	32,500	32,500
Services of PNS Insurance company to provide life insurance to employees [Note 1]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 1]	Nil	Nil

Services of fitness center to provide wellness services to employees [Note 1]	Nil	Nil
Work contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 2]	4,500	4,500
Laying of pipeline up to the gate of factory from water source located outside the factory [Note 3]	Nil	Nil
Installation of telecommunication towers [Note 3]	<u>Nil</u>	<u>Nil</u>
Total ITC	37,000	37,000

Notes:

As per section 17(5) of the CGST Act, 2017

- (1) ITC on life insurance is blocked unless it is used in case of sub-contracting or the same is provided under any statutory obligation. ITC on travel benefits extended to employees on home travel concession and membership of health and fitness center is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
- (2) ITC on 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, is blocked. Hence, ITC on works contract services for construction of plant and machinery is allowed. Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.
- (3) ITC on goods and/ or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and/ or services are used in course/ furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication towers.

2. (a) As per explanation to rule 33 of the CGST Rules, 2017, a “pure agent” means a person who-
 - (a) 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;
 - (b) 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;
 - (c) does not use for his own interest such goods or services so procured; and
 - (d) 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.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

In the given case, Garud Logistics has entered into a contractual agreement with recipient of supply, Heron Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S. No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Garud Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Garud Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Garud Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, 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, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Garud Logistics as a pure agent of Heron Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Garud Logistics is as follows:

Particulars	Amount (Rs.)
Agency charges	6,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil
Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Heron Export Import House in Mumbai, Maharashtra	Nil
Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	60,000
Travelling expenses	75,000
Telephone expenses	<u>5,000</u>
Value of supply	7,40,000

Yes, the answer would be different. If lump sum amount of Rs. 25,00,000 is paid, then the value of supply shall be Rs. 25,00,000 and tax shall be charged on value of supply, since individual cost are not given.

- (b) Computation of total customs duty and integrated tax payable

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US \$
Exchange rate [Note 1]	Rs. 70 per \$
	Rs.
FOB value computed by Customs Officer (in rupees)	14,00,000.00
Add: Commission payable to agent in India	<u>12,500.00</u>
FOB value as per customs	14,12,500.00
Add: Air freight (Rs. 14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of Rs. 14,12,500) [Note 3]	<u>15,890.63</u>

CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% (Rs.17,10,890.63× 10%) – rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on Rs. 1,71,089 rounded off	<u>17,109</u>
Total	18,99,089
Integrated tax @ 12% (Rs.18,99,089× 12%) [Rounded off] [Note 5]	2,27,891
Total customs duty and integrated tax payable (Rs. 1,71,089 + Rs. 17,109 + Rs. 2,27,891)	4,16,089

Note:

1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
 2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
 5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.
3. (a) (i) As per section 12(7)(a)(ii) of the IGST Act, 2017 when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.
- Since, in the given case, the service recipient [Mr. Sheru] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.
- (ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e. Pune, Maharashtra.
- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient vide section 12(7)(a)(i) of the IGST Act, 2017.
- Therefore, if Mr. Sheru is a registered person, then in both the cases, i.e. either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient, i.e. Pune, Maharashtra.
- (b) Since Hodu Ltd. holds 51% shares of Wanky Inc., Hodu Ltd. and Wanky Inc. are 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per second proviso to section 13(3) of the CGST Act, 2017, in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply is the earlier of the following two dates:

Date of entry in the books of account of the recipient of supply [which is Hodu Ltd. in the present case]	30 th September
OR	

Date of payment [by Hodu Ltd. in the present case]	23 rd December
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Thus, time of supply is 30th September.

- (c) (i) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.
- (ii) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.
- (iii) **Valid.** As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favored nation agreement, unless a determination has been made in the prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.
4. (a) (i) Section 22(1) of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds Rs. 40,00,000.
- However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.
- Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of the CGST Act, 2017.
- In the given case, the turnover of the company for the half year ended on 30th September is Rs. 45 lakh which is more than the applicable threshold limit of Rs. 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since SS Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.
- However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above Rs. 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of Rs. 40 lakh includes exempt turnover also.
- Therefore, turnover of 'P' prior to 1st November will also be considered for determining the limit of Rs. 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.
- (ii) Section 18(1)(a) of the CGST Act, 2017 provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, SS Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing P as input tax credit of only inputs is allowed when a person gets registered for the first time.

- (b) The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1) of the CGST Act, 2017, *inter alia*, stipulates that every registered person who causes movement of goods of consignment value exceeding Rs. 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, generate an electronic way bill (E-way Bill) before commencement of such movement.

CBIC vide FAQs on E-way Bill has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds Rs. 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Orip Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

- (c) The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCE., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

5. (a) Due date for payment of tax for the month of April is 20th May.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or Rs. 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of show cause notice to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Jaiveer & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

- (i) 10% of tax, viz., Rs. 11,700 (10% of Rs. 1,17,000) or
- (ii) Rs. 10,000,

whichever is higher, is payable by him. Thus, penalty payable is Rs. 11,700.

Hence, the stand taken by the Department that penalty will be levied on Jaiveer & Co. is correct, but the amount of penalty of Rs. 58,500 is not correct.

- (b) As per section 117(1) of the CGST Act, 2017 an appeal against orders passed by the State Bench or Area Benches of the Tribunal would lie to the High Court, if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the CGST Act 2017, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Ms. Kiya's case relates to place of supply, the appeal in her case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Ms. Kiya will have to file an appeal with the Supreme Court and not with the High Court.

- (c) Section 18 of the Customs Act, 1962 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D of the Customs Act, 1962 places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s QTE does not produce any evidence of bearing the burden of duty.

6. (a) As per section 97(2) of the CGST Act, 2017 advance ruling can be sought for the following questions:-

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the CGST 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 activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.

- (b) The Commissioner of CGST can authorize a CGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2) of the CGST Act, 2017. This essentially means that a person can be arrested only where the tax evasion is more than Rs. 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

- (c) Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act.

In exercise of the powers conferred by the FT (D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is generally updated every year in April, in addition to changes that are made throughout the year.

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

- (i) Central Board of Indirect Taxes and Customs (CBIC)
- (ii) Reserve Bank of India (RBI)
- (iii) State VAT Departments