

PAPER – 8: INDIRECT TAX LAWS

1. Question paper comprises of 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. All the questions should be answered on the basis of position of (i) GST laws as amended by significant notifications/circulars issued till 30th April, 2020 and (ii) custom law as amended by the Finance (No. 2) Act, 2019 and significant notifications/circulars issued till 30th April, 2020.

Question 1

Mr. Rishi, a registered supplier under GST in the State of Maharashtra, provides the following information for the month of January 2020:

Sl. No.	Particulars	Amount in ₹
	OUTWARD SUPPLY:	
(i)	Supplied computers (which were purchased from an unregistered supplier) without any consideration to his brother-in-law in Ranchi (market value of supply was ₹ 62,000)	Nil
(ii)	Supplied a consignment of 10 laptops to M/s NK & Co. in the State of Maharashtra at the instruction of third person being M/s ZX Computers of Tamilnadu.	6,00,000
(iii)	Provided stock counting service to M/s XY Impex registered with GST in the State of Gujarat, whereas the place where the stock counting was carried out was at the godown located in Mumbai	80,000
(iv)	Provided renting service of his service apartment in Mumbai at a daily rent of ₹ 1500 for residential purposes	30,000
(v)	Recovery agent services provided to Apex Finance Ltd., an NBFC located in Delhi	2,00,000
(vi)	Advance received during the month for future intra-State supply	9,00,000
	INWARD SUPPLY:	
(i)	Imported computer accessories from Korea and the goods landed in Mumbai Port and reached at his registered premises on 31.01.2020	5,00,000
(ii)	Availed GTA services from M/s Speed Trans of Kolkata with regard to transport of traded goods where rate of CGST/SGST @ 2.5% each IGST @ 5% was applicable	1,00,000
(iii)	Apart from the above, received 15 invoices involving IGST of ₹ 1,00,000 during the current month	--

Mr. Rishi provided the following additional information:

- (a) Turnover for the previous financial year was ₹ 21 lakh.
- (b) He had availed services in an inter-State transaction with a taxable value of ₹ 4,00,000 and a tax rate of 18%. This transaction was liable to tax under reverse charge. Payment for the same to the supplier was not made till the current month (overdue for 181 days as at 01.01.2020). However, tax due under the said transaction was paid to Government and credit availed in the month of transaction itself.
- (c) Out of the 15 invoices as per above, 12 invoices involving IGST of ₹95,000 were uploaded by the suppliers in their GSTR-1 Return. All the invoices are eligible for claiming as ITC.
- (d) He had sent goods valued ₹ 1,00,000 to his job worker, in the State of Kerala, who further processed the said goods and made direct supply on 31.01.2020 from Kerala to a buyer in the State of Maharashtra.
- (e) Out of advance received for future supply, ₹ 5,00,000 related to supply of goods and the rest related to service.
- (f) Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services. Same rate is also applicable for inward supplies received, except where otherwise provided.
- (g) All the amounts given are exclusive of taxes wherever applicable.

From the information given above, you are required to compute the net GST liability payable in cash (CGST and SGST or IGST, as the case may be) for the month of January, 2020. Assessee wants to make the cash payment of GST under SGST head as far as possible. **(14 Marks)**

Answer

Computation of net GST payable in cash for the month of January 2020

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
A.	GST liability on outward supply				
(i)	Computers supplied without consideration [Not a supply as it is made without consideration and is also not covered in Schedule I because computers have been supplied to an unrelated person and ITC has also not been availed on the same.]	Nil	-	-	-

(ii)	Consignment of laptops supplied at the instruction of third person [Since supply is a bill to ship to supply where the goods are delivered on the direction of a third person-ZX Computers, goods are deemed to be received by ZX Computers and thus, the place of supply is Tamil Nadu. Hence, it is an inter-State supply.]	6,00,000			1,08,000 [6,00,000 × 18%]
(iii)	Stock counting service to M/s XY Impex of Gujarat [Intra-State supply as the place of supply is the location of recipient, viz. Mumbai. Godown at Mumbai being a fixed establishment is the location of recipient.]	80,000	7,200 [80,000 × 9%]	7,200 [80,000 × 9%]	NIL
(iv)	Service apartment rented in Mumbai ¹ [Taxable, since the value of supply of the accommodation unit exceeds ₹ 1,000 per day. Intra-State supply since place of supply is Maharashtra as property is located in Mumbai.]	30,000	2,700 [30,000 × 9%]	2,700 [30,000 × 9%]	
(v)	Recovery agent services provided to an NBFC [Tax is payable by the NBFC under reverse charge.]	2,00,000	-	-	-
(vi)	Advance received for intra-State supply [Tax on advance received for supply of goods of ₹ 5,00,000]	4,00,000	36,000 [4,00,000 × 9%]	36,000 [4,00,000 × 9%]	

¹ Exemption for renting of residential dwelling for use as residence available under entry no. 12 of Notification No. 12/2017 CT(R) dated 28.06.2017 has not been provided basis the view that such renting is for a longer duration and does not cover in its ambit, renting for a day.

	will be payable at the time of issuance of invoice.]				
(vii)	Finished goods sold from the premises of the job worker ² [Supply of goods by principal from the job worker's premises is regarded as supply by principal only irrespective of the location of job worker. Therefore, since the place of supply is the location where movement of goods terminates for delivery to recipient, i.e., Maharashtra, it is an intra-State supply.]	1,00,000	9,000 [1,00,000× 9%]	9,000 [1,00,000× 9%]	
<i>Total tax liability on outward supplies</i>			54,900	54,900	1,08,000
B.	GST liability on inward supplies under reverse charge				
(i)	GTA services availed from M/s Speed Trans [Tax is payable under reverse charge on the GTA services received by a registered person and on which tax is payable @ 5%. Further, it is an inter-State supply since supplier is located in Kolkata and place of supply is Maharashtra (location of registered recipient)]	1,00,000			5,000 [1,00,000× 5%]
C.	Input tax credit				
	Import of computer accessories	5,00,000 ³			90,000 [5,00,000× 18%]

²It has been assumed that either Mr. Rishi has declared the job worker's place of business / premises as his additional place of business or the job worker is registered. Further, it has been assumed that the goods have been sold from the job worker's premises at a price of ₹ 1,00,000 itself.

³ It has been assumed that the value of imported computer accessories is inclusive of basic customs duty and social welfare surcharge and consequently, the IGST has been computed on the same.

	[Input tax, <i>inter alia</i> , includes IGST charged on import of goods]				
	GTA services availed	1,00,000			5,000
	IGST on invoices received during the month [Full ITC can be claimed on the invoices uploaded by supplier in Form GSTR-1. Further, where invoice has not been uploaded by the supplier in its GSTR-1, 10% of the eligible ITC available in respect of the uploaded invoices or actual ITC in respect of invoices not uploaded, whichever is lower, can be claimed by the recipient, [i.e., lower of 10% of ₹ 95,000, or ₹ 5,000]				95,000 + 5,000 =1,00,000
	Less: Input tax reversed [Outward supply, tax on which is payable under reverse charge is considered as exempt supply for the purpose of reversal of ITC. = ₹ 1,95,000 x ₹ 2,00,000/ ₹ 19,10,000 (₹ 1,95,000 x turnover of exempt supply/ total turnover) [The condition for making the payment for the supply within 180 days so that the ITC availed does not get added to the output tax liability does not apply to reverse charge supplies. Thus, ITC on ₹ 4,00,000 will not be affected.]				(20,419)
	<i>Total ITC available for set off</i>		-	-	1,74,581

D.	Computation of net GST payable in cash				
	Total tax liability on outward supplies		54,900	54,900	1,08,000
	Less: ITC of IGST		(54,900)	(11,681)	(1,08,000)
	Forward charge liability on outward supplies payable in cash after set off of ITC		-		
	Reverse charge liability on inward supplies payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]				5,000
	Total net GST liability payable in cash⁴		-	43,219	5,000

Question 2

- (a) *M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. The concern provides the following information pertaining to supply made/input services availed by it during the month of March 2020:*

	<i>Particulars</i>	<i>₹</i>
(i)	<i>Provided Direct Selling Agent service to Y Bank Ltd.</i>	<i>4,00,000</i>
(ii)	<i>Provided security services to ABC P. Ltd., a registered person under GST</i>	<i>60,000</i>
(iii)	<i>Provided security services to PSR Trust, an unregistered person under GST</i>	<i>1,00,000</i>
(iv)	<i>Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel</i>	<i>75,000</i>
(v)	<i>Provided renting of motor vehicle to Priti & Co., CA firm and supply value included cost of fuel</i>	<i>40,000</i>
(vi)	<i>Availed representational service from PB and Co., a law firm towards a Consumer Court case</i>	<i>70,000</i>

⁴ It has been assumed that IGST has been paid on imported goods before January 2020. Therefore, the same has not been considered as being paid in cash in the month of January 2020.

Determine the GST liability of M/s All-in-One for the month of March, 2020 by giving necessary explanations for treatment of various items. Rate of tax for both inward and outward supply is CGST/SGST@ 9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February, 2020. All the supplies are intra-State only. **(5 Marks)**

- (b) M/s Global Travels is providing money changer and air travel agent services to various clients. From the information provided below, you are required to calculate the value of taxable supply for the month of March 2020:
- (i) It had converted US \$ 6,000 into Singapore dollar 9,000. RBI reference rate at that time was ₹ 72 per US \$ and for Singapore dollar, it was ₹ 52.
- (ii) It had booked domestic ticket value of ₹ 7,00,000 and international ticket value of ₹ 15,00,000.

Additional information:

The concern has not opted to value the money change under rule 32(2)(b) of the CGST Rules, 2017. Basic air fare component under both domestic and international ticket value is 70% and 60% respectively. **(4 Marks)**

- (c) Detox Limited wants to import customized machine to be used in its business. Detox Ltd. provides the following further details:

Sl. No.	Particulars	Amount
(1)	Cost of the machine	USD 15,000
(2)	Charges paid to canalising agent in India	₹ 25,000
(3)	Freight charges (Air)	USD 1,500
(4)	Insurance charges	USD 250
(5)	Basic customs duty	10% on 12.06.2020 and 15% on 15.06.2020
(6)	Social welfare surcharge	10%
(7)	Integrated GST	12%
(8)	Date of Bill of Entry - 12.06.2020, Rate notified by CBIC - ₹ 75 per USD, Rate notified by RBI - ₹ 76 per USD	
(9)	Date of arrival of aircraft - 15.06.2020, Rate notified by CBIC - ₹ 77 per USD, Rate notified by RBI - ₹ 78 per USD	

You are required to compute the customs duty and integrated tax payable by Detox Ltd. on above import. **(5 Marks)**

Answer

(a) GST liability of M/s All-in-One

	Particulars	Value [₹]	CGST payable [₹]	SGST payable [₹]
A.	GST liability on outward supply			
(i)	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	4,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
(ii)	Security services ⁵ to ABC P. Ltd., a registered person ⁶ [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		
(iii)	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
(iv)	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel [Tax is payable under reverse charge by recipient since such services are provided by a non-body corporate to a body corporate and GST is payable @ 5%.]	-		
(v)	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost of fuel [Tax is payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.]	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
	Total GST liability on outward supplies		46,000	46,000

⁵It is assumed that security services are the services provided by way of supply of security personnel.

⁶It is assumed that ABC Pvt. Ltd. pays tax under section 9 of the CGST Act, 2017.

B. GST liability on inward supplies under reverse charge				
(vi)	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration, are exempt from GST. Since M/s All-in-One started its business in February 2020, its turnover in the preceding financial year is zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services provided to it are exempt from GST.]	70,000	-	-
	GST liability on inward supplies under reverse charge		-	-

- (b) (i) Since in the given case, neither of the currencies exchanged is Indian Rupees, value of taxable supply, in terms of rule 32(2)(a) of the CGST Rules, 2017, is 1% of lower of the following:

(A) US dollar converted into Indian rupees at RBI reference rate
 = US \$ 6,000 × ₹ 72 = ₹ 4,32,000

(B) Singapore dollar converted into Indian rupees at RBI reference rate
 = Singapore dollar 9,000 × ₹ 52 = ₹ 4,68,000

Value of taxable service for the month of March 2020 = 1% of ₹ 4,32,000 = ₹ 4,320

- (ii) **Computation of value of taxable supply**

Particulars	₹	₹
Basic fare in case of domestic bookings [₹ 7,00,000 x 70%]	4,90,000	
Value of taxable supply @ 5% [A] [Rule 32(3) of the CGST Rules, 2017]		24,500
Basic fare in case of international bookings [₹ 15,00,000 x 60%]	9,00,000	
Value of taxable supply @ 10% [B]		90,000

[Rule 32(3) of the CGST Rules, 2017]		
Value of taxable supply [A] + [B]		1,14,500

(c) **Computation of customs duty and integrated tax**

Particulars	Amount
Cost of machine	USD 15,000
	(₹)
Cost of machine in rupees @ ₹ 75 per USD [Rate of exchange notified by the CBIC on the date of presentation of bill of entry]	11,25,000.00
Add: Charges paid to canalising agent in India [Includible in assessable value as it's not a buying commission]	<u>25,000.00</u>
FOB value as per customs	11,50,000.00
Add: Air freight (USD 1,500 x ₹ 75) [Actual freight is added since it does not exceed 20% of FOB value]	1,12,500.00
Add: Insurance (USD 250 x ₹ 75)	<u>18,750.00</u>
Assessable value	12,81,250.00
Add: Basic custom duty @15% (rounded off) [Rate in force on the date of presentation of bill of entry or on the date of arrival of aircraft, whichever is later.]	1,92,188
Add: Social Welfare Surcharge @ 10% of ₹ 1,92,188 (rounded off)	<u>19,219</u>
Total	14,92,657
Integrated tax @ 12% (rounded off)	1,79,119
Total customs duties [₹ 1,92,188 + ₹ 19,219]	2,11,407

Question 3

- (a) *M/s Housefull Convention Hall is in the business of letting out its halls for functions. It provides you with the following information for determining the amount of refund out of advance received based on time of supply for one of its clients.*

Sl. No.	Particulars	Date	Amount in ₹
(1)	Advance paid at the time of booking the hall for a function from 1 st to 3 rd Nov., 2019	16.07.2019	1,00,000
(2)	Additional deposit paid	18.08.2019	2,00,000

(3)	Function is held as scheduled	1 st Nov. to 3 rd Nov. 2019	
(4)	Invoice is issued (Taxable value)	25.11.2019	2,50,000
(5)	Consider that there is a change in the rate of tax on 15 th October, 2019 from (CGST 2.5% and SGST 2.5%) to (CGST 9% and SGST 9%)		
(6)	What would be the amount of refund payable to the client?		

(5 Marks)

- (b) M/s Joinder Drills of Australia exports rough rock cutting diamonds to M/s Ankit Enterprises of India, a registered supplier in the State of Haryana. M/s Ankit Enterprises is expected to process them into tools and export the same to the supplier in Australia. The process does not involve any sophisticated process other than cutting, polishing and finishing. M/s Ankit Enterprises requests M/s Joinder Drills for use of such tools for his business in India for 3 months, which is agreed to by the supplier. It then exports it to the Australian supplier, invoicing it for ₹ 12,00,000 for processing it into the required tool.

M/s Ankit Enterprises is of the assumption that it is an export transaction and therefore, it is entitled to treat it as a zero-rated supply and decides that no tax is payable under LUT although the rate applicable to such services for domestic supplies is CGST - 9%, SGST - 9% and IGST - 18%.

State the provisions relating to the above supply of service and explain whether the stand taken by M/s Ankit Enterprises is correct and also determine the tax, if applicable, as the goods are now moving out of Haryana.

(4 Marks)

- (c) PCB Limited has imported printed circuit boards for sale in India from Country X, which are liable for anti-dumping duty. You are provided with the following details.
- Country X does not sell these goods in its domestic market.
However, it exports the same printed circuit boards at USD 200 per piece to another third country.
 - The printed circuit board is sold in domestic industry @ USD 175 per piece.
 - PCB Limited has imported the printed circuit boards at USD 100 per piece.
 - Landed value of the printed circuit boards is USD 125 per piece.

Compute the anti-dumping duty payable by PCB Limited for 1,000 pieces of printed circuit boards it has imported during the year assuming conversion rate @ ₹ 75 per USD.

(5 Marks)

Answer

- (a) The time of supply of services is the date of issue of invoice if the same is issued within 30 days from the date of supply of service or the date of receipt of payment, whichever is earlier.

In the given case, invoice is issued within 30 days of the supply of service and advances have also been received. Therefore, tax becomes payable at the time of receipt of advances on 16.07.2019 and 18.08.2019 as it is not clear at the time of receipt of such advances as to what would be the total value of the supply. However, when invoice is issued for a lesser value on 25.11.2019, refund would become payable to the client.

In case of change in rate of tax, where the service is supplied and invoice is issued after the change in rate of tax and payment is received before change in rate of tax, time of supply shall be date of issue of invoice, i.e., 25.11.2019. Hence, applicable rate of tax is new rate even though tax has been paid at old rate on advances received.

Therefore, refund payable to client will be computed as under:

Total advance received including GST =	₹ 3,00,000 ⁷
Less: Actual liability [₹ 2,50,000 + ₹ 2,50,000 x 18% (new rate of tax)] =	<u>₹ 2,95,000</u>
Amount of refund	<u>₹ 5,000</u>

- (b) One of the conditions for a supply of service to qualify as export of service is that the place of supply of said service must be outside India.

The place of supply of services supplied in respect of the goods which are temporarily imported into India for any other treatment/process and are exported after such treatment/process without being put to any use in India, other than that which is required for such treatment/process, is the location of recipient of such service [Second proviso to section 13(3)(a) of the IGST Act, 2017].

In view of the above, in the given case, the place of supply of the services provided by M/s Ankit Enterprises is the place where the services are actually performed, i.e., in India as the tools to be exported have been used in India for 3 months before their export. Resultantly, the supply of services by M/s Ankit Enterprises do not qualify as export of service.

Since the recipient is outside India, the place of supply is governed by section 13 and hence, the supply is not an intra-State supply in terms of section 8(2) of the IGST Act, 2017⁸. Therefore, since the place of supply is in India and the supply is not an intra-State supply, the same is an inter-State supply [in terms of section 7(5)(c) of the IGST Act, 2017]

⁷ It has been assumed that the advances received are inclusive of tax.

⁸ In case where the place of supply (determined under section 13 of the IGST Act, 2017) and the location of supplier are in the same State, CBIC FAQs on 'Banking, Insurance and Stock Brokers Sector' have taken a view that such supplies will be treated as intra-State supply.

of services and not of goods. Thus, the same is liable to IGST of ₹ 1,83,051 (₹ 12,00,000/118 x 18)⁹.

(c) The quantum of anti-dumping duty is:

(i) margin of dumping or (ii) injury margin, whichever is lower.

Margin of dumping is the difference between export price and normal value of the imported article and injury margin is the difference between the fair selling price [non-injurious price (NIP)] due to the domestic industry and the landed value of the dumped imports.

In the given case, anti-dumping duty per piece is:

(i) Margin of dumping is USD 100 [USD 200¹⁰ - USD 100¹¹]

or

(ii) Injury margin is USD 50 [USD 175¹² – USD 125¹³]

whichever is lower i.e. USD 50

Anti-dumping duty for 1,000 pieces (in rupees) = USD 50 × 1,000 pieces × ₹ 75 = ₹ 37,50,000

Question 4

(a) *Input Service Distributor (ISD) of a company is registered separately in the State of Kerala and is distributing Input Tax Credit (ITC) to other units in the company. Following details are furnished for a particular month, and you are required to help the ISD department in distributing the ITC to other units that are carrying on manufacturing, supplying goods and services to customers.*

Sl. No.	Particulars	Amount in lakh (₹)
	Turnover in the relevant month of each of the units:	
(1)	Mumbai (Maharashtra)	12.00
(2)	Bangalore (Karnataka)	60.00
(3)	Hyderabad (Andhra Pradesh)	36.00

⁹ It has been assumed that the amount of ₹ 12,00,000 is inclusive of IGST.

¹⁰ When there are no sales of the like article in the domestic market of the exporting country, normal value is taken as the comparable representative price of the like article when exported from the exporting country to an appropriate third country.

¹¹ Export price is price of the article exported from the exporting country.

¹² Fair Selling Price/Non-Injurious Price is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market. It has been most logically assumed that the "domestic industry" referred to in point (ii) of the question refers to the domestic Indian market.

¹³Landed value

(4)	Trivandrum (Kerala)	72.00
(5)	Total ITC available during the month with the ISD (includes CGST/SGST & IGST) on account of supplies received during the month	48.00
(6)	From the above, ITC exclusive to Bangalore unit, available as IGST credit	12.00
(7)	From the above, ITC exclusive to Trivandrum and Hyderabad units (CGST and SGST of ₹3.00 lakh each)	6.00
(8)	Rest of the credit available is allocable as common credit to all the units and is received from local suppliers in Kerala.	
(9)	Basic value of a debit note received, during the month, in respect of a previous supply, with rate of tax @ 12% IGST being charged and shown separately	50.00
(10)	Total value in the credit note received, during the month, applicable exclusively to Kerala unit, taxed at the rate of 9% CGST and 9% SGST, which is charged and indicated separately	118.00

Also make your comments regarding the amount of ITC in credit notes, if exceeds the ITC from invoices and debit notes in a particular month for all or any of the units. **(5 Marks)**

- (b) (i) A Central Government Department located at Uttar Pradesh is registered with the Commercial Tax Department UP State for deducting GST. It enters into a contract with a Public Sector Undertaking (PSU), registered under GST in the State of Delhi, for supplying goods valued ₹ 3,50,000. The PSU argues that no tax is deductible on this supply by the Central Government Department as it is located outside the State of Uttar Pradesh and therefore not liable to tax under CGST and SGST as it is a local levy and IGST tax deduction is not applicable if it is located in another State, other than the State in which the Department is registered. You are required to comment on this.
- (ii) Would there be any difference, if instead of the PSU if it was an entity in the private sector? Applicable tax rate for deduction is 1% CGST, 1% SGST and 2% IGST.
- (iii) If the private sector entity undertakes works contract, for the above Department in New Delhi. What would be the position of tax deduction when the contract value is ₹ 5,00,000?
- (iv) The disbursing officer has not paid the tax deducted in the month of February 2019, amounting to ₹2,00,000 under CGST and 2,00,000 under SGST to the Government's account on the relevant due date, but has paid it on 14th May, 2019. Further, return for that month is also filed on that date and the certificate is also issued

simultaneously. What are the consequences, on such failures, to the disbursing officer under the GST law? **(4 Marks)**

- (c) Times Graphics Ltd. has imported a machine from its holding company in Japan on 12.01.2018 after paying customs duty of ₹ 15,00,000 for use in its factory and is re-exported on 10.10.2018. You are required to advise Times Graphics Limited regarding duty drawback that will be available to the company, when it sends back the machinery to its holding company after completion of the project. **(5 Marks)**

Answer

- (a) **Computation of the amount of credit distributed¹⁴ by the ISD to various units of the company**

Particulars	Mumbai Unit			Bangalore Unit			Hyderabad Unit			Trivandrum Unit		
	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST
	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)	(₹)
ITC exclusive to Bangalore unit available as IGST [ITC of IGST is distributed as IGST only.]						12						
ITC exclusive to Trivandrum and Hyderabad units [ITC of CGST and SGST is distributed as CGST and SGST to unit located in Kerala (Trivandrum unit) and as IGST to unit located in a different State (Hyderabad unit) in the ratio of 2:1.]									2	2	2	
Common credit for all units [Balance credit of CGST and SGST (since supplies are received locally) of ₹ 15 lakh each (₹ 48 lakh – ₹ 12 lakh			2			10			6	6	6	

¹⁴It has been most logically assumed that the credit to be distributed by ISD is the credit of input services.

– ₹ 6 lakh) to be distributed among all four units in proportion of their turnover of the relevant month, i.e., 1:5:3:6. Further, ITC will be distributed to Mumbai, Bangalore and Hyderabad unit as IGST and to Trivandrum unit as CGST and SGST.]											
Additional ITC [₹ 6 lakh (₹ 50 lakh ¹⁵ × 12%)] on account of debit note received ¹⁶ from supplier to be distributed among all four units in proportion of their turnover of the relevant month, i.e., 1:5:3:6. [ITC of IGST is distributed as IGST only.]			0.4			2			1.2		2.4
ITC to be reduced on account of credit note received from supplier, exclusive to Kerala unit ¹⁷ 9% of (₹ 118 lakh ¹⁸ × 100/118)										9	9

¹⁵ Being basic value of the debit note received, the amount of ₹ 50 lakh has been assumed to be exclusive of taxes.

¹⁶ It has been most logically assumed that the additional ITC of ₹ 6 lakh on account of the debit note received during the month from a supplier in respect of a previous supply pertains to all the four units.

¹⁷ It has been most logically assumed that there is one unit of the company located in Kerala and i.e., Trivandrum unit.

¹⁸ Being total value in credit note received, the amount of ₹ 118 lakh has been assumed to be inclusive of taxes.

Total ITC apportioned to each unit	0	0	2.4	0	0	24	0	0	9.2	-1	-1	2.4
Negative amount apportioned to Trivandrum unit shall be added to its output tax liability since ITC distributed to it by ISD is less than the amount reduced on account of credit note										1	1	

- (b) (i) Certain specified persons are required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000.
- However, the tax is not liable to be deducted at source when supply of goods and/or services has taken place between one specified person to another specified person. Since both Central Government Department and PSU are the specified persons, tax is not deductible in case of supply of goods between them.
- (ii) Central Government Department is mandatorily required to deduct IGST @ 2% since a private entity is not the specified person.
- (iii) Since, in the given case, the location of supplier and place of supply is in the same State, i.e., Delhi and location of recipient is in UP, Central Government Department is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000¹⁹.
- (iv) Failure to deposit TDS with the Government and failure to furnish TDS return within the stipulated time period will result in following consequences:
- (A) Interest @ 18% p.a. on the amount of tax deducted shall be payable.
 - (B) Late fee of ₹ 100 per day for the period of delay in furnishing return, or ₹ 5,000, whichever is lower, shall be payable. Equal amount of late fee will be payable under the respective State law.
 - (C) Applicable penalty will also be levied.
- (c) Since in the given case, the imported goods have been used for more than 6 months but not more than 9 months before re-exportation, 75% of the import duty paid shall be allowed as duty drawback to Times Graphics Ltd. Thus, amount of duty drawback available to Times Graphics Ltd. is:

¹⁹ It has been assumed that the location of private entity and the place of supply are in Delhi and the Central Government Department is in U.P.

$$= ₹ 15,00,000 \times 75\%$$

$$= ₹ 11,25,000$$

Question 5

- (a) *M/s Fly-by-Night, tour operators, availed input tax credit in respect of certain transactions where no such supplier was existent or from a person not doing any business from the registered place of business.*

Jurisdictional Deputy Commissioner of GST wants to restrict the utilization of the credit by M/s Fly-by-Night. You have been approached by M/s Fly-by-Night to give your advice on the following questions raised by it:

- (i) *Is it possible for the Department to restrict the utilization of credit which is already availed?*
- (ii) *If yes, under what circumstances this can be done by the Department? (5 Marks)*
- (b) *Mr. Jagjeevan has filed Form GSTR 3B after the due date prescribed for filing it. The adjudicating authority is of the opinion that penalty has to be levied under section 73(9) & (11) of the CGST Act, 2017 and has decided to pass an order for levying penalty of 10% of the tax or ₹ 10,000, whichever is higher, on the grounds that amount collected as tax has not been paid within a period of 30 days from the due date of payment of tax. Discuss the decision of the adjudication authority as to its correctness or otherwise.*

Also, discuss the law of limitation period for issuing the show cause notice and passing the adjudication order under section 73 of the CGST Act, 2017. (4 Marks)

- (c) *List out the conditions for eligibility for duty credit scrip entitlement under Service Exports from India Scheme (SEIS) and determine whether the following cases are eligible for benefit under SEIS.*
- (i) *Mr. Raj has received USD 12,500 as consideration for services provided, during the year. He has also paid USD 3,000 towards services received from abroad. He has also received USD 4,000 towards employment rendered abroad during the year.*
- (ii) *Services Ltd. has received the USD 16,000 as foreign exchange during the year towards share capital.*
- (iii) *Mrs. Anita has received USD 15,000 as consideration for services provided, during the year.*

Assume that except for in case (iii) above, others have an active IEC. (5 Marks)

Answer

- (a) (i) Yes, it is possible for the Department to restrict the utilization of credit which is already availed if there are reasons to believe that such ITC has been fraudulently availed or is ineligible.
- (ii) The restrictions can be imposed under the following circumstances: -

- (a) ITC has been availed on the basis of tax invoices/valid documents -
- issued by a non-existent supplier or by a person not conducting any business from the registered place of business; or
 - without receipt of goods or services or both; or
 - the tax in relation to which has not been paid to the Government
- (b) Registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
- (c) Registered person availing ITC is not in possession of tax invoice/valid.
- (b) The decision of the adjudicating authority is not correct in law.

The provisions of section 73(11) of the CGST Act, 2017 can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid.

Thus, penalty under the provisions of section 73(11) is not payable in such cases although a general penalty may be imposed since the tax has been paid late in contravention of the provisions of the CGST Act, as clarified vide *Circular No. 76/50/2018 GST dated 31.12.2018*.

The time-limit for issuance of SCN is 2 years and 9 months and time-limit for passing the adjudication order is within 3 years from:

- (i) the due date of filing annual return for the financial year to which the demand pertains or
- (ii) the date of erroneous refund, as the case may be.
- (c) The conditions for eligibility for duty credit scrip entitlement under SEIS are as under: -
- (1) Service provider must be located in India.
 - (2) It must provide notified services from India either to any other country or to service consumers of any other country in India.
 - (3) It must have an active IEC at the time of rendering such services for which rewards are claimed.
 - (4) While an individual service provider/sole-proprietorship should have minimum net foreign exchange earnings (NFE) of USD 10,000, other service providers should have minimum NFE of USD 15,000, in the year of rendering service.

In view of the aforesaid provisions, the eligibility of the given cases for the benefit under SEIS has been determined as under:

- (i) NFE = Gross earnings of foreign exchange minus Total expenses/ payment/ remittances of foreign exchange by the IEC holder, relating to service sector in the financial year

$$= \text{USD } 12,500 - \text{USD } 3,000 = \text{USD } 9,500$$

Receipt of USD 4,000 towards employment rendered abroad during the year is not related to service sector and thus should not be considered for calculating NFE.

Therefore, Mr. Raj is not eligible for SEIS scheme as his NFE is less than USD 10,000 (minimum limit for individuals).

- (ii) Foreign exchange remittances which are earned for rendering of notified services are only considered for calculating NFE. Thus, foreign exchange earned towards share capital cannot be taken into account for calculation of SEIS entitlement.

Thus, Services Ltd. is not eligible for SEIS scheme.

- (iii) Since Mrs. Anita does not have an active IEC, she is not eligible for SEIS scheme irrespective of her NFE.

Note: The above answer is based on the assumption that service provider (in all the three independent cases) is located in India and provides notified services from India either to any other country or to service consumers of any other country in India.

Question 6

- (a) *Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority.*

While commenting on the decision of Mr. Mahendran, you are also required to state the powers of the Revisional Authority to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017.

What is the time period for the Revisional Authority to exercise the power of revision?

(5 Marks)

OR

- (a) *Who are the members of the GST Council? Enumerate any two recommendations that can be made by the GST Council.*
- (b) *Decide with reason whether the registration is required under CGST Act, 2017 in the following independent cases:*
- (i) *A casual taxable person (CTP) has provided inter-State supply of notified products being textiles hand printing amounting to ₹ 19.25 lakh during the month of January, 2020. Those products were made by craftsmen by both hand and machines equally. CTP had obtained PAN and generated e-way bill for supply.*
- (ii) *Mr. Bantu of Delhi doing trading business across India and his intra-State turnover details are as below,*

- (1) Taxable supplies made from Delhi - ₹ 18 lakh.
- (2) Exempt supplies made from Andhra Pradesh - ₹ 10 lakh.
- (3) Both taxable and exempt supplies made from Tamilnadu - ₹ 5,00,000 and ₹ 6,00,000 respectively. **(4 Marks)**
- (c) Mr. X has imported some items from abroad. Since he was unable to make a self-assessment, he has sought for provisional assessment pending technical testing on 29.04.2020. The technical report was received on 05.05.2020. Discuss about the time limit available to the officer for finalizing the provisional assessment as per law and guide Mr. X as to when his provisional assessment will be finalized. **(5 Marks)**

Answer

- (a) The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is not valid in law. Any person aggrieved by an order passed against him by RA under CGST Act may appeal to the Appellate Tribunal, the second level of appeal

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

- (i) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.
- (ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.
- (iii) The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order.

The RA can revise an order after the expiry of a period of 6 months from the date of communication of the said order but not later than expiry of a period of 3 years from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

(a) Alternative Answer

The GST Council shall consist of the following members, namely: —

- (a) the Union Finance Minister is the Chairperson;

- (b) the Union Minister of State in charge of Revenue or Finance is the Member;
- (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are the Members.

The recommendations that can be made by GST Council are as under: -

- (i) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in GST;
 - (ii) the goods and services that may be subjected to, or exempted from GST;
 - (iii) model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce and the principles governing the place of supply;
 - (iv) the threshold limit of turnover below which goods and services may be exempted from GST;
 - (v) the rates including floor rates with bands of GST;
 - (vi) any special rate(s) for a specified period, to raise additional resources during any natural calamity/disaster;
 - (vii) special provision with respect to Special Category States;
 - (viii) the date on which the GST be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel;
 - (ix) any other matter relating to the GST, as the Council may decide.
- (b) (i)** A casual taxable person (CTP) is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, CTPs making inter-State taxable supplies of notified products, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process, have been exempted from obtaining registration if their aggregate turnover does not exceed ₹ 20 lakh [₹ 10 lakh for specified special category States].

Since, in the given case, the notified products were made by craftsmen by both hand and machines equally, they are not eligible for exemption and are required to obtain registration mandatorily.

- (ii)** For a supplier exclusively engaged in intra-State supply of goods, the threshold limit of turnover to obtain registration in the States of Delhi, Andhra Pradesh and Tamil Nadu is ₹ 40 lakh. Aggregate turnover includes value of all taxable and exempt supplies under same PAN.

Thus, aggregate turnover of Mr. Bantu doing trading business across India²⁰

= ₹ (18 lakh + 10 lakh + 5 lakh + 6 lakh)

= ₹ 39 lakh.

Therefore, Mr. Bantu is not liable for registration as his turnover does not exceed ₹ 40 lakh.

- (c) The proper officer can finalize the provisional assessment within 2 months of receipt of a chemical or other test report, where the provisional assessment is ordered for that reason.

The Commissioner of Customs may allow a further time period of 3 months in case the proper officer is not able to finalize the provisional assessment within the period of 2 months.

Thus, in the given case, provisional assessment will be finalized by 05.07.2020 [within 2 months of receipt of test report (05.05.2020)]. However, if the proper officer is not able to finalize the provisional assessment by 05.07.2020, the Commissioner may allow a further period of 3 months, i.e., till 05.10.2020 to the proper officer to finalize the provisional assessment.

²⁰ It has been assumed that Mr. Bantu makes only intra-State supplies across India.