

INDIGOLEARN
CA FINAL -IDT
QUICK REFERENCER Q&A

Q1. Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.

Ans. It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

List I Union List	List II State List	List III Concurrent List
It contains the matters in respect of which the Parliament (Central Government) has the exclusive right to make laws. Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List.	It contains the matters in respect of which the State Government has the exclusive right to make laws. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. <u>Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.</u>	It contains the matters in respect of which both the Central & State Governments have power to make laws.

Q2. Discuss the dual GST model introduced in India.

Ans. India has adopted a Dual GST model in view of the federal structure of the country. Centre and States will simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the State of Jammu and Kashmir.

Q3. Please give example of 'in course of business' and 'in furtherance of business'.

Ans. ABC Ltd. Is engaged in the business of transmission of power across the Maharashtra. Transmission of power is carried out through the networks of transmission lines and sub-stations constructed by ABC Ltd. It has a market share of 50% transmission network in India. This is example of 'in course of business'.

ABC Ltd. appointed consultants to increase market share from 50% to 60%. It can be organic or un-organic route.

This is example of 'in furtherance of business'.

Q4. List the Central and State levies which will be subsumed in GST in India.

Ans.

Central levies to be subsumed	State levies to subsumed
<ul style="list-style-type: none"> • Central Excise Duty & Additional Excise Duties • Service Tax • Excise Duty under Medicinal & Toilet Preparation Act • CVD & Special CVD • Central Sales Tax • Central surcharges and Cesses in so far as they relate to supply of goods & services 	<ul style="list-style-type: none"> • State surcharges and cesses in so far as they relate to supply of goods & services • Entertainment Tax (except those levied by local bodies) • Tax on lottery, betting and gambling • Entry Tax (All Forms) & Purchase Tax • VAT/ Sales tax • Luxury Tax • Taxes on advertisements

Q5. Why it is necessary to distinguish whether a particular supply involves supply of goods or services or both?

Ans. Yes, the CGST Act, 2017 specifies certain provisions separately for supply of goods and supply of services viz., Section 12 and Section 13 thereof provides for ascertaining time of supply of goods and time of supply of services respectively, similarly, separate provisions have been specified for ascertaining place of supply of goods and place of supply of services. Further, the rate of tax applicable to supply of goods and supply of services are different. Accordingly, it is important to distinguish whether a particular transaction involves supply of goods or supply of services or both.

Q6. Mr. Anand buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of CGST/SGST Act? Give reasons for the answer?

Ans. 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.

Q7. Varun Motors pvt ltd is an authorized dealer of motor vehicles and is having registered office in Hyderabad and Vijayawada. Certain motor vehicles are taken from Hyderabad (show-room) to Vijayawada (show-room) for sale from Vijayawada. Whether this interstate movement of vehicles would amount to supply of goods?

Ans. Under GST law, scope of supply has been defined under section 7 of CGST Act. Supply as defined U/s 7 covers, supply of goods between deemed distinct persons, i.e., different premises of same person which are separately registered

under GST law. Such transaction amounts to supply even in the absence of any consideration. As per facts given, Hyderabad-registered premise has transferred goods to Vijayawada registered premise. Such stock-transfer from Hyderabad - registered premise to Vijayawada registered premise shall amount to supply of goods. Such stock-transfer being interstate transfer shall be treated as 'inter-state supply' and will attract IGST liability.

Q8. HAL Ltd. is an aircraft operator operating pan-india air travel services. It has registered officers in different states. It sent some parts and accessories of aircraft from its Hyderabad registered premise to Maharashtra registered premise.

Whether this transaction would amount to supply of goods under GST?

Ans. Under GST law, scope of supply has been defined under section 7 of CGST Act. Supply as defined U/s 7 covers, supply of goods between deemed distinct persons, i.e., different premises of same person which are separately registered under GST law. Such transaction amounts to supply even in the absence of any consideration. As per facts given, Hyderabad-registered premise has transferred goods (parts and accessories of aircraft) to Maharashtra registered premise. Such stock-transfer from Hyderabad-registered premise to Maharashtra registered premise shall amount to supply of goods. Such stock-transfer being inter-state transfer shall be treated as 'inter-state supply' and will attract IGST liability.

Q9. Varun Motors Pvt Ltd. is an authorized dealer of motor vehicles and is having registered office in Vijaywada. It is also running authorized service station of motor vehicles registered in HYDERABAD. Certain motor vehicles are taken from Vijaywada (show-room) to HYDERABAD (service-station) for repairs. Whether this inter-state movement of vehicles would amount to supply of goods under GST?

Ans. As per given facts, registered supplier of motor vehicle has taken his motor vehicle for repairs at its other registered premises (authorized service station in HYDERABAD). Post-repair, he will bring back goods to his registered show- room in Vijaywada. This transaction of inter-state movement of vehicles for repairs will not amount to supply within the meaning of Section 7 of CGST Act.

Q10. ABC is providing service of transportation of goods/passengers which is taxable under GST in hands of ABC. It has registered offices in different states which are treated as deemed distinct persons under GST law. Whether inter- state movement of any conveyance carrying goods/passengers from one registered premise to another registered premise will amount to supply of such conveyance under GST law? (e.g. Bus

carrying passenger from Hyderabad, Telangana bus terminal to Bangalore, Karnataka bus terminal, dropping passengers there and then picking passengers from Bangalore, Karnataka bus terminal to Hyderabad, Telangana bus terminal. In this case, whether inter- state movement of bus from Hyderabad, Maharashtra bus terminal to Bangalore, Karnataka bus terminal would amount to supply?

Ans. Under GST law, scope of supply has been defined under section 7 of CGST Act. Only transactions falling within scope laid down in Sec 7 will amount to supply. As per given facts, ABC is registered supplier of transportation services. During course of such service, conveyance moves from one registered premises to another registered premise. This transaction of inter-state movement of vehicles is not involving any further supply of such conveyance. Such inter-state movement will not amount to supply within the meaning of Section 7 of CGST Act.

Q11. Examine whether the following activities would amount to supply under section 7 of the CGST Act:

- (a) A Charitable Trust, a trust who gets the eye treatment of needy people done free of cost, donates clothes and toys to children living in slum area.**
- (b) X ltd Manufacturers have a factory in Vijaywada and a depot in Hyderabad. Both these establishments are registered in respective States. Finished goods are sent from factory in Vijaywada to the Hyderabad depot without consideration so that the same can be sold.**
- (c) Khan is an Electronic Commerce Operator in Chennai. His brother who is settled in London is a well-known lawyer. Khan has taken legal advice from him free of cost with regard to his family dispute.**
- (d) Would your answer be different if in the above case, Khan has taken advice in respect of his business unit in Chennai?**

Ans.

- (a)** Section 7 of the CGST Act, inter alia, provides that supply must be made for a consideration except the activities specified in Schedule I and in course or furtherance of business. Since, both these elements are missing, donation of clothes and toys to children living in slum area would not amount to supply under section 7 of the CGST Act.
- (b)** Schedule I of CGST Act, inter alia, stipulates that supply of goods or services or both between related persons or between distinct persons as

specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, where a person who has obtained or is required to obtain registration in a State in respect of an establishment, has an establishment in another State, then such establishments shall be treated as establishments of distinct persons [Section 25 of the CGST Act]. In view of the same, factory and depot of X ltd. Manufacturers are establishments of two distinct persons. Therefore, supply of goods from Vijaywada factory of X ltd. Manufacturers to Hyderabad Depot without consideration, but in course/furtherance of business, is supply under section 7 of the CGST Act.

- (c) Schedule I of CGST Act, inter alia, stipulates 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, Khan has received legal services from his brother free of cost in a personal matter and not in course or furtherance of business. Hence, services provided by Khan's brother to him would not be treated as supply under section 7 of the CGST Act.
- (d) In the above case, if Khan has taken advice with regard to his business unit, services provided by Khan's brother to him would be treated as supply under section 7 of the CGST Act as the same are provided in course or furtherance of business though received from a related person.

Q12. Determine whether the following supplies amount to composite supplies:

- (a) A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided along with the room accommodation.**
- (b) A toothpaste company has offered the scheme of free toothbrush alongwith the toothpaste.**

Ans. Under composite supply, two or more taxable supplies of goods or services or both, or any combination thereof, are naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act]. In view of the same,

- (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
- (b) since supply of toothbrush along with the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.

Q13. Can composition scheme be availed if the taxable person has inter-State inward supplies?

Ans. Yes. Composition scheme is applicable subject to the condition that the taxable person does not engage in making inter-state outward supplies, while there is no restriction on making any inter- State inward supplies.

Q14. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of Rs. 75 lakhs/1.5 crore during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e. section 9, from such day.

Q15. Whether a Restaurant is supplying liquor/alcohol is eligible for Composition Scheme?

Ans. A restaurant is supplying liquor/alcohol is not eligible for Composition Scheme because according to the provisions of the Act, composition scheme cannot be availed on those goods and services on which GST is not levied and liquor/alcohol are out of the scope of GST. Person has no choice to go to composition scheme, rather he has an only window of regular scheme which is mandatory if he fails under the criteria of aggregate turnover.

Q16. Can a person paying tax under composition scheme make supplies of goods to SEZ?

Ans. No. Supplies to SEZ from domestic tariff area (DTA) will be treated as inter-State supply. A person paying tax under composition scheme cannot make inter-State outward supply of goods. Thus, for making supplies to an SEZ unit, a person needs to take registration as a regular taxpayer. The supplies to SEZ will be zero rated and the supplier will be entitled to make supplies without payment of tax or if he pays tax, he will be entitled to refund of tax so paid.

Q17. Will withdrawal intimation in any one place be applicable to all places of business?

Ans. Yes. Any intimation or application for withdrawal in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Q18. Whether CGST & SGST/UTGST is applicable on import of goods or service or both?

Ans. In terms of Section 7 of the IGST Act, 2017, import of goods or services or both is shall be treated to be a supply in the course of inter-State trade or commerce. Accordingly, tax under the provisions of IGST Act, 2017 (i.e. IGST) shall apply on import of goods or services or both.

- Import of Goods: IGST leviable U/s 5 of IGST Act. However, it is collected in the manner specified under Customs Tariff Act, 1975. Valuation of such transaction is also as per provisions of Customs Tariff Act.
- Import of Services: IGST leviable U/s 5 of IGST Act. However, it is collected as per provisions of GST law (i.e. as per time of supply of such transaction). Valuation of such transaction is also as per provisions of GST law.

Q19. Whether IGST on import of goods would be levied under IGST Act or under Customs Act?

Ans. As per Section 7(2) of IGST Act, import of goods is Inter-State Supply. Thus, IGST will be levied on import of goods also. However as per Section 5:

- ✓ IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act
- ✓ Value shall be 'Value determined as per Sec 14 of Customs Act, 1962 (please refer Valuation chapter in Custom Book)

Q20. A tourist from USA visits India and purchases a handicraft wooden item in Hyderabad. How it is going to be taxed under GST?

Ans. In terms of proviso to section 8(1), supplies made to a tourist shall not be treated as intra-state supply even when location of the supplier and the place of supply of goods are in the same State or same Union territory.

In terms of sec 7(5)(c) of IGST Act, 2017, where supply of goods or services or both is in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be liable to IGST.

Q21. Mr. A is a whole-time director of ABC Ltd. Salary is Rs. 5,00,000 per month. Besides he gets sitting fees for Board's meetings. During Dec'17 and Mar'18, sitting fees is Rs. 1,00,000 for five meetings. Find out GST liability if any.

Ans. Mr. A being whole time director is an employee of company. The remuneration received by him (including sitting fees for Board's meeting) is in the course of employment contract. Supply of such services is out of scope of supply in view of provisions laid down in Sec 7(2) of CGST Act read with Schedule III of CGST Act. Thus, GST is not applicable to the transaction.

Q22. Mr. A has written a book which is published by ABC Ltd. of Hyderabad. You are required to find the following: (a) who is liable to pay GST? (b) Rework, if publisher is located in Paris, then who is liable to pay GST?

Ans.

- a) ABC Ltd. of Hyderabad being recipient of service is liable to pay GST under RCM.
- b) RCM shall not be applicable in this case as recipient is not located in taxable territory. Thus, Mr. A shall be liable to pay GST. However, such supply will qualify as 'export of service' provided payment received in convertible foreign currency. Such supply of service shall be zero-rated (as per provisions of Sec 16 of IGST Act, 2017). In that event, Mr. A shall be entitled to supply such service without payment of IGST.

Q23. AB & Co. is a firm of advocates (partners are A and B), having equal profit sharing ratio. Find out the GST liability

- a) Legal professional services provided to X, an advocate of Hyderabad High Court (gross receipts of X is always more than Rs. 50,00,000 per annum): Rs. 8,00,000
- b) Legal professional services provided to B & Co. (a firm of 10 advocates) : Rs. 32,00,000.
- c) Legal professional services provided to C (an Employee) (this service is provided to C in a personal legal matter) : Rs. 6,00,000.
- d) Legal professional services provided to D Ltd., Vijaywada based company (turnover of D Ltd. of the preceding financial year is Rs. 6,00,000) : Rs. 11,00,000.
- e) Legal professional services provided to E Ltd., Vijaywada based company (turnover of E Ltd. of the preceding financial year is Rs. 50,00,000) : Rs. 5,00,000.

Above figures are exclusive of GST. Please analyze each case and give your answer mentioning forward charge or reverse charge.

Ans.

- a) Services provided to X, shall be exempt as provided to individual advocate via entry no. 45.
- b) Services provided to B & Co., shall be exempt via entry no. 45
- c) Services provided to C, shall be exempt since provided to non-business entity
- d) Services provided to D Ltd., shall be exempt as provided to business entity having turnover not exceeding Rs 20,00,000
- e) This will be subject to reverse charge & E Ltd. has to pay reverse charge @ 18% i.e. Rs. 90,000.

Q24. Would GST be payable on goods not intended to be sold, taken out for participation in overseas exhibitions and trade fairs and brought back into India as these goods are meant for exhibition only ?

Ans. GST is not payable in such cases. Exporters will need exhibition participation letter and no foreign exchange involved letter from the concerned bank for the purpose of exchange control requirements. At the time of re-import, identity of goods imported with export goods needs to be established to seek exemption from import duty in accordance with Customs provisions. IGST will be exempted at the time of re-import in view of exemptions granted under Customs.

Q25. State person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:

- (a) Services provided by an arbitral tribunal to any business entity.
- (b) Sponsorship services provided by a company to an individual.
- (c) Renting of immovable property service provided by the Central Government to a business entity.

Ans.

- (a) Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.
- (b) GST on sponsorship services provided by any person to any body corporate or partnership firm located in the taxable territory is payable

under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier – company.

- (c) Renting of immovable property services by the Central Government to a registered person, is subject to reverse charge if the recipient is a registered person.

Q26. Can any person other than the supplier or recipient be liable to pay tax under GST?

Ans. Yes, the Government can specify categories of services the tax on which shall be paid by the Electronic Commerce Operator, if such services are supplied through it and all the provisions of the GST law shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services.

For this purpose, services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle and services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration, supplied through ECO have been notified.

Q27. A person availing composition scheme in Haryana during a financial year crosses the turnover of Rs. 1.5 crore during the course of the year i.e. he crosses the turnover of Rs. 1.5 crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?

Ans. No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme during the financial year exceeds the specified limit (Rs. 1.5 crore).

He is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days from the day on which the threshold limit has been crossed.

Q28. A hotel owner provided accommodation in Haryana, through an electronic commerce operator – Cool Trips. The hotel owner is not liable to get registered as per the provisions of section 22(1) of the CGST Act.

Who is the person liable to pay GST in this case?

Would your answer be different if the Electronic Commerce Operator Cool Trips does not have a physical presence in India?

Ans. Government may notify [on the recommendations of the GST Council] specific categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it. Services by way of providing accommodation in hotels through electronic commerce operator is a specified service for said purpose.

Thus, person liable to pay GST in this case is the Electronic Commerce Operator Cool Trips. All the provisions of the GST law shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Cool Trips does not have a physical presence in India, person liable to pay tax is the person representing the Electronic Commerce Operator-Cool Trips for any purpose in India.

Q29. Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed Rs. 1.5 crore:

- (i) Mr.X is engaged in providing legal services in Hyderabad and is registered in the same State.**
- (ii) Sugam Manufacturers has registered offices in Chennai and Coimbatore and supplies goods in neighboring States.**

Ans.:

- (i)** A supplier of services engaged in the supplies other than the supplies referred to in clause (b) of paragraph 6 of Schedule II of CGST Act i.e. supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, is not eligible for composition levy. Since Mr.X provides legal services, he is not eligible for composition scheme.
- (ii)** Since supplier of inter-State outward supplies of goods is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

Q30. Mohan Enterprises has two registered business verticals in Vijaywada. Its aggregate turnover for the preceding year for both the business verticals was Rs. 70 lakh. It wishes to pay tax under composition levy for one of the vertical in the current year while under normal levy for other vertical. You are required to advice Mohan Enterprises whether he can do so?

Ans. A registered person with an aggregate turnover in a preceding financial year up to Rs. 1.5 crore is eligible for composition levy in Vijaywada. Since the aggregate turnover of Mohan Enterprises does not exceed Rs. 1.5 crore, it is eligible for composition levy in the current year.

However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Mohan Enterprises either have to opt for composition levy for both the verticals or under normal levy for both the verticals.

Q31. Exploration site is at 150 nautical miles from base line. Some minerals explored (not petroleum etc.) and sent to refinery in Maharashtra, the nearest State. Whether this will attract IGST or CGST and SGST?

Ans. Exploration site is location of supplier. Location of site in 150 NM is beyond territorial waters but still within Indian territory (as for purposes of GST law, definition of India covers area upto exclusive economic zone). Such site shall be treated as located in 'other territory' which is also 'a union territory' as defined under Sec 2(114) of CGST Act. Exploration Site is supplying goods to refinery in Maharashtra. Thus, place of supply of goods is falling into Maharashtra State.

Since location of supplier is union territory and place of supply is Maharashtra, it is inter-state supply in terms of Sec 7(1) of IGST Act. Thus, aforesaid supply shall attract charge of IGST under section 5 of IGST Act.

Q32. An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?

Ans. 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 football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

However, when he acts as a referee in a charity football match organized by a local sports club, he 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 this case.

Q33. RXL Pvt. Ltd. manufactures beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth Rs. 1,20,000 will be donated to a charitable organization.

Whether Ms. Ahana Kapoor will be required to pay any GST?

Ans. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than Rs. 1,50,000. However, such exemption is not available in respect of service provided by such artist as a brand ambassador. Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. To promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

Q34. Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered persons:

Particulars	Gross amount charged (Rs.)
Fees charged for yoga camp conducted by a charitable trust	50,000
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Saving Bank Accounts	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

Ans.

Computation of value of taxable supply

Particulars	Rs.
Fees charged for yoga camp conducted by a charitable trust (Note 1)	Nil
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts (Note 2)	Nil
Amount charged by cord blood bank for preservation of stem cells (Note 3)	Nil
Service provided by commentator to a recognized sports body (Note 4)	5,20,000

Notes:

1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. The activities relating to advancement of yoga are included in the definition of charitable activities. So, such activities are exempt from GST.
2. Services by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch have been exempted from GST.
3. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.
4. Services provided to a recognized sports body only by an individual 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. Thus, services provided by commentators are liable to GST.

Q35. Examine whether GST is exempted on the following independent supplies of services:

- (i) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from the school.
- (ii) Services provided by way of vehicle parking to general public in a shopping mall.

Ans.

- (i) Yes. Services provided TO an educational institution by way of transportation of students are exempted from GST.
- (ii) No. Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.

Q36. Discuss whether GST is payable in respect of transportation services provided by Raghav Goods Transport Agency in each of the following independent cases:

Customer	Nature of services provided	Amount charged
A	Transportation of milk	Rs.20,000
B	Transportation of books on a consignment transported in a single goods carriage	Rs.3,000
C	Transportation of chairs for a single consignee in the goods carriage	Rs.600

Ans.

Customer	Nature of services provided	Amount charged	Taxability
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A	Transportation of milk	Rs.20,000	Exempt Transportation of milk by goods transport agency is exempt.
B	Transportation of books on a consignment transported in a single goods carriage	Rs.3,000	GST is payable. 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.
C	Transportation of chairs for a single consignee in the goods carriage	Rs.600	Exempt Transportation of goods where consideration for transportation of all goods for a single consignee does not exceed Rs.750 is exempt.

Q37. What is the place of supply of services by way of transportation of goods (Section 12 & 13)?

Ans. Section 12(8) of the IGST Act, 2017 provides that services by way of transportation of goods provided to a registered person shall be the location of registered person. Such services if provided to a person other than a registered person, shall have place of supply and the location at which such goods are handed over for their transportation. Example, if Express limited, a goods transport company based out of Chennai, provides transportation services to Cars Limited, an automobile company based out of Bangalore, for movement of their cars from the warehouse of Cars Limited at Silvassa to Vijaywada, then the place of supply of transportation services shall be Bangalore if Cars Limited is a registered person. If Cars Limited is not a registered person, then the place of supply of transportation services shall be Vijaywada (location at which such goods are handed over).

As per Section 13(9) of the IGST Act, 2017 the place of supply of services of transportation of goods, other than by way of mail or courier will be the place of destination of the goods. Example: If PQ shipping Co. located in India charges ocean freight charges for transport of goods to Germany for a customer located in India, the place of supply of service will be Germany.

Q38. What will be the place of supply of leased line services when the leased circuit is installed at more than one location/State?

Ans. As per Section 12(11) of the IGST Act, 2017, if leased circuit is installed in more than one state and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard. In absence of such contract or agreement then the place of supply shall be determined as may be prescribed in rules. Example, if Software Ltd, a company based out of Bangalore procures services of leased circuit lines for its branches in Hyderabad and Calcutta and Chennai from DTH limited, a company based out of New Vijaywada, then the place of supply of service of leased circuit lines shall be proportionately at each branch where the installation is done. In case, software Ltd pays a lump sum amount for the latest circuit lines services of all branches, then the apportionment between states shall be done on reasonable basis as may be prescribed in this regard.

Q39. What will be the place of supply of training services (Section 12)?

Ans Section 12(5) of the IGST Act, 2017 provides that when a training service is provided to a registered person, the location of such registered person shall be the place of supply of training services. In case the service is provided to a person other than a registered person, then the place of supply shall be the location where the services are actually performed. Example - If Mr. A, a resident of Bangalore, conducts training for employees of Software Ltd, a company based out of New Vijaywada, in Shimla Resort located in Shimla, then the place of supply of training service shall be New Vijaywada if Software Ltd is a registered person. If Software Ltd is not a registered person, then the place of supply of training service shall be Shimla.

Q40. What is the meaning of location of supplier?

Ans. The term location of supplier of goods has not been defined in the IGST Act, 2017. This is not an oversight of the draughtsman but a deliberate intention of the lawmaker to leave it to the facts of each case to determine the 'location of supplier of goods'.

Location of supplier of service is defined under Section 2(15) of the IGST Act, 2017 as under:

- a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;
- b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment

- most directly concerned with the provision of the supply; and
- d) in absence of such places, the location of the usual place of residence of the supplier.

Q41. What is the meaning of location of recipient?

Ans. The term location of recipient of goods has not been defined in the IGST Act, 2017.

However, location of recipient of service is defined under Section 2(14) of the IGST Act, 2017 as under:

- a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- d) in absence of such places, the location of the usual place of residence of the recipient.

Q42. Whether separate invoice needs to be issued, to a particular customer if multiple Places of Supply occur because of supply of distinct goods or services or both?.

Ans. Yes, separate invoice needs to be issued, to a particular customer if multiple Places of Supply occur because of supply of distinct goods or services or both. Eg: servicing of a motor vehicle wherein there is independent service element and also spare parts getting replaced. Services are charged at 18% tax and spare parts majorly are taxed at 28%. Considering this case to be a B2C, for invoicing of services we have to go by address on record which could be other State hence place of supply is that other State. However, in case of goods since there is no evidence on record to the supplier that the goods which are replaced would be leaving the State of origin and would travel to the other State, the service provider would treat POS as his own State. This method is also supported by the fact that GSTR-1 (Outward supply) returns does not allow to key in 2 different place of supply for the same invoice.

Q43. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Vijaywada to Hyderabad covering multiple states.

What will be the place of supply of construction services?

Ans. Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3) of the IGST Act, for domestic supplies].

Q44. What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?

Ans. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is the place where event is held. Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply will be taken as being in each state in proportion to the value of services so provided in each state [Explanation to section 12(7) of the IGST Act].

Q45. What is the place of supply of goods services by way of transportation of goods, including mail or courier?

Ans. In case of domestic supply

If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation [Section 12(8) of the IGST Act].

In case of international supply

The place of supply of transport services, other than the courier services, is the destination of goods. For courier, the place of supply of services is where goods are handed over to courier. However, if the courier services are performed even partially in India, the place of supply is deemed as India [Section 13(2), 13(6) and 13(9) of the IGST Act].

Q46. What will be the place of supply of passenger transportation service, if a person travels from Hyderabad to Vijaywada and back to Hyderabad?

Ans. If the person is registered, the place of supply will be the location of recipient.

If the person is not registered, the place of supply for the forward journey from Hyderabad to Vijaywada will be Hyderabad, the place where he embarks [Section 12(9) of IGST Act].

However, for the return journey, the place of supply will be Vijaywada as the return journey has to be treated as separate journey [Explanation to section 12(9) of the IGST Act].

Q47. What is the place of supply for mobile connection? Can it be the location of supplier?

Ans. For domestic supplies

The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply is the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record will be taken as the place of service.

For international supplies

The place of supply of telecom services is the location of the recipient of service.

Q48. A person from Hyderabad goes to chennai and takes some services from ICICI Bank in chennai. What is the place of supply?

Ans. If the service is not linked to the account of person, place of supply will be chennai i.e., the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply will be Hyderabad, the location of recipient on the records of the supplier.

Q49. An unregistered person from Hyderabad travels by Air India flight from Hyderabad to Vijaywada and gets his travel insurance done in Hyderabad.

What is the place of supply of insurance services?

Ans. When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Hyderabad is the place of supply [Section 12(13) of the IGST Act].

Q50. Mr. A entered into a contract with Mr. B to supply of oil throughout the year. Mr. A issues monthly statement for the oil supplied to Mr. B. Now, determine the time of supply of goods in following cases:

- a) Mr. B made payment for the month of July on 31st July 2017 and Mr. A issued statement for the month of July on 8th August 2017.
- b) Mr. A issued statement for the month of August on 5th September 2017, the payment of which not received till 30th September 2017.

Ans.

- a) 31st July 2017 will be the time of supply.
Earliest of the following:
 - Date of invoice i.e. 8th August 2017
 - Last date on which invoice has to be issued: Date of payment or statement whichever is earlier i.e. 31st July 2017.
- b) 5th September 2017 will be the time of supply. Earliest of the following:
 - Date of invoice: 5th September 2017.
 - Last date on which invoice has to be issued: Date of payment or statement whichever is earlier i.e. 5th September 2017

Q51. ABC Ltd., a registered firm received services from PQR Ltd., an unregistered firm. PQR Ltd. issued invoice to ABC Ltd. on 1st July 2017. ABC Ltd. & PQR Ltd. is not associated enterprises. Determine the time of supply of services:

- a) ABC Ltd. made the payment to PQR Ltd. on 15th August 2017.
- b) ABC Ltd. made the payment to PQR Ltd. on 11th September 2017.

Ans.

- a) 15th August 2017 will be the time of supply of services as payment made earlier than the date immediately following 60 days from the date of issue of invoice.
- b) 31st August 2017 will be time of supply of services as payment made after the date immediately following 60 days from the date of invoice.

Q52. XYZ Ltd. and ABC Ltd. is associated enterprises. XYZ Ltd., a registered firm received the services of ABC Ltd., an unregistered firm. Determine the time of supply in following case:

- a) XYZ Ltd. recorded the liability in the books on 15th July 2017 and payment will be made in the next month.
- b) XYZ Ltd. made advance payment to ABC Ltd. on 10th July 2017 and recorded liability in the books on 15th July 2017.

Ans.

- a) 15th July 2017 will be the time of supply of services as the date of entry in the books is prior to the date of payment.
- b) 10th July 2017 will be the time of supply of services as the payment is made earlier to the date of entry in the books.

Q53. An income-tax and money laundering case against Mr. XYZ, working in a multi-national company, reveals a large volume of undisclosed assets, which he claims as service income. On this basis, the GST authorities investigate the GST liability. Dates of provision of service, whether in the first half or the second half of the financial year being scrutinized by income-tax authorities, are not known. Mr. XYZ voluntarily pays GST during the investigation.

What is the time of supply of the services.

Ans. Where it is not possible to determine the time of supply in terms of date of invoice or date of provision of service or date of receipt of payment or date of receipt of services in the books of account of the recipient, and where periodical returns is not to be filed (Mr. XYZ, being an employee in a multi-national company, is not registered person), the date of payment of tax is taken as the time of supply [Section 13 (5) (b)].

Therefore, the date when Mr. XYZ pays the GST will be the time of supply.

Q54. Where it is not possible to determine the time of supply in terms of, any of the condition, then how will time of supply be determined?

Ans. There is a residual entry in which says that if periodical return has to be filed, then the due date of filing of such periodical return shall be the time of supply. In other cases, it will be the date on which the CGST/SGST/IGST is actually paid.

Q55. Suppose, you have raised invoice with old rate of tax but now you are required to remit taxes based on new rate of tax. Can you recover the additional tax payable. If your answer is yes, will the customer be able to take input tax credit of such additional taxes?

Ans. Yes, you can issue supplementary tax invoice or debit note to recover the additional tax from the customer.

If the customer is entitled to claim the credit of tax mentioned in the original invoice, the input tax credit of additional taxes can be availed which is subject to conditions specified in this regard.

Q56. What will be the time of supply in case of supply of goods through e-commerce entities?

Ans. The CGST Act, 2017 does not provide separate provisions for ascertaining time of supply of goods through by e-commerce entities. Accordingly, the same provisions as to time of supply of goods will be applicable whether a supplier makes supply through e-commerce entity or the e-commerce entity himself makes the supply.

Q58. What will be the date of payment to ascertain the time of supply of goods, in case of tax payer under composition scheme?

Ans. In terms of the Explanation 2 appended to Section 12, the date of payment shall be the earliest of the following dates:

- a) Date on which payment is entered in books of accounts of the supplier; or
- b) Date on which payment is credited to the bank account.

Q59. What will be the time of supply where multiple invoices are issued for a single consignment involving supply of goods?

Ans. The time of supply of goods shall be the date of issuance of invoice; or due date for issuance of invoice whichever is earlier, in relation to the respective invoice in case of the registered person who did not opt for the composition levy under section 10. However, in any other case, the time of supply of goods shall be the date of issuance of invoice; or due date for issuance of invoice or receipt of payment by the supplier, whichever is earlier, in relation to the respective invoice.

Q60. What will be the time of supply, where tax is liable to be paid on goods under reverse charge mechanism?

Ans. In case of tax liable to be paid on goods under reverse charge mechanism, the time of supply shall be the earliest of the following:

- a) Date of receipt of goods by the recipient; or
- b) Date on which the payment is entered in the books of accounts of the recipient; or
- c) Date on which payment is debited in the bank account of the recipient; or
- d) Date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Where the time of supply cannot be ascertained as above, the date of entry in the books of accounts of the recipient shall be the time of supply of goods.

Q61. State whether, Composite supply will attract the provisions pertaining to time of supply of goods or services? How, it will be different in case of Mixed supply?

Ans. Section 8(a) provides that the composite supply whether involves supply of goods or services shall be decided based on the principal supply forming part of 'composite supply'. In other words, if the composite supply involves supply of services as principal supply, such composite supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, if composite supply involves supply of goods as principal supply, such composite supply would qualify as supply of goods and accordingly, the provisions relating to time of supply of goods would be applicable.

Section 8(b) provides that the mixed supply whether involves supply of goods or services shall be ascertained on the basis of a particular supply forming part of the mixed supply which attracts highest rate of tax. In other words, the mixed supply, if involves supply of any service liable to tax at the higher rate than any goods covered therein, such mixed supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, the mixed supply, if involves supply of any goods liable to tax at the higher rate than services covered therein, such mixed supply would qualify as supply of goods and accordingly the provisions relating to time of supply of goods would be applicable.

Q62. What is time of supply of service with respect to receipt of amount in excess of the invoice amount. E.g.: Invoice is issued for Rs. 5,000 on September 22, 2018 by the supplier. Subsequently, the recipient pays

Scenario 1: Rs. 5,500/- and

Scenario 2: Rs. 8,000/-.

Moreover, invoices are issued within the time stipulated under section 31 as services are provide on October 10,2018; Date on which payment is entered in books of accounts of the supplier on September 30,2018 and Date on which payment is credited to the bank account is September 28,2018?

Ans. In terms of the proviso to Section 13(2) of the CGST Act, 2017, the time of supply of service with respect to the amount received in excess up to Rs. 1,000/- of the amount indicated in tax invoice, shall at the option of the supplier, be the date of issue of invoice, in respect of such excess amount. Thus, if the supplier opts for this method, the time of supply will be the date when the supplier raises invoice in respect of the excess amount.

Where the excess amount is received exceeds Rs. 1,000/-, the time of supply of goods shall be the earliest of the date of invoice or date of receipt i.e., earliest of the following:

- a) Date of issue of invoice by the supplier, if the invoice is issued within the period prescribed u/s 31 or the date of receipt of payment, whichever is earlier; or
- b) Date of provision of service, if the invoice is not issued within the period prescribed u/s 31 or the date of receipt of payment, whichever is earlier; or
- c) Date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Accordingly, the time of supply in each of the scenarios given in the example would be as follows:

Scenario 1: The time of supply of service for Rs. 5,000 shall be September 22, 2018 and with respect to remaining amount of Rs. 500/- received in excess shall be, at the option of the supplier be the date of receipt of payment i.e. September 28, 2018 or the date of invoice whenever raised by the supplier in respect of the excess amount.

Scenario 2: The time of supply of service for Rs. 5,000 shall be September 22, 2018 and with respect to remaining amount of Rs. 3000/- received in excess shall be September 28, 2018 being date on which payment is credited to the bank account.

Q63. Time of supply of services under reverse charge mechanism where the supplier of service is associated enterprises?

Ans. In case of associated enterprises located within India, the time of supply in terms of Section 13(3) shall be the earliest of the following:

- a) Date of payment as per books of accounts of the recipient; or
- b) Date on which payment is debited in the bank account of the recipient; or
- c) Sixty days from the date of issuing invoice or any other document, by whatever name called, in lieu thereof by the supplier; or

If it is not possible to determine the time of supply under the aforesaid clauses, the time of supply shall be the date of entry in the books of account of the recipient of supply. Thus, the same provisions as applicable to a supplier who is not associated enterprise will apply for services provided by associated enterprises located in India.

Where associated enterprises is located outside India, the time of supply shall be the earliest of the following dates:

- a) Date of entry in the books of accounts of the recipient; or
- b) Date of payment.

Particulars	Non-associated enterprises	Associated Enterprises
Date on which payment is entered in books of accounts	September 14, 2018	September 14, 2018
Date on which payment is debited to bank account	September 17, 2018	September 17, 2018
Date of issuance of invoice	September 10, 2018	September 10, 2018
Sixty days from the date of issuing invoice	November 10, 2018	November 10, 2018
Date of entry in the books of accounts of the recipient	September 10, 2018	September 10, 2018
Time of supply	September 14, 2018	September 10, 2018

Q64. Time of supply where services are supplied online?

Ans. The CGST Act, 2017 does not provide separate provisions for ascertaining the time of supply of service where such services are supplied online and hence the same provisions for services will apply for services supplied online.

Q65. Ashok Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e., 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July.

What is the time of supply of the transporter's service?

Note: Transporter's service is taxed on reverse charge basis.

Ans. Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

- Date of payment
- 61st day from the date of issue of invoice

In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, that is 17th June, will be treated as the time of supply of service [Section 13(3)(a)].

Q66. Raju Pvt. Ltd. receives the order and advance payment on 5th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice is issued at that time, and it is issued much later, after the expiry of prescribed period for issue of invoice.

When is the time of supply of service?

Ans. Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):

- Date of provision of service
- Date of receipt of payment

The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e., 5th January is the time of supply of the service in this case.

Q67. Sodexo meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.

What is the date of supply of the coupons?

Ans. As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).

Q68. A firm of lawyers issues invoice for services to ABC Ltd. on 17th Feb. The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company. The dispute drags on and finally payment is made on 3rd November.

Identify the time of supply of the legal services.

Note: Legal services are taxable on reverse charge basis.

Ans. Time of supply of services that are taxable under reverse charge is earliest of the following two dates In terms of section 13(3):

- Date of payment [3rd November]
- 61st day from the date of issue of invoice [19th April]

The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service.

Therefore, the 61st day from supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

Q69. Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December.

What is the method to fix the time of supply of the service?

Ans. The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)].

In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, the date of provision of service, i.e., 5th September, will be the time of supply.

Q70. Will the Section 15 read with Chapter IV of the CGST Rules, 2017 apply to IGST payable on import of goods? How valuation will be done in case of import of services?

Ans. No. As per Proviso to Sec. 5(1) of IGST Act, Customs Law will be applicable for valuation of imported goods. Section 15 read with Chapter IV of the CGST Rules, 2017 will apply for valuation of import of services.

Q71. Is reference to the CGST Rules required in all cases?

Ans. No. Reference to the CGST Rules, 2017 is required only when the supply is between related persons (including different registrations of the same PAN and principal-agent supplies), or where the consideration payable is not wholly in money. However, in specific cases where the categories of goods and services are notified in this regard (such as money-changing), the CGST Rules, 2017 must be referred to, irrespective of the fact that the supplier and recipient are unrelated, and price is the sole consideration.

Q72. If related persons transact at arm's length price, can the valuation still be questioned?

Ans. The law mandates a reference to the CGST Rules where the supply is between related persons. However, since the supply is at "arm's length price", the fact that the price assigned to the transaction is an 'open market value' should be established.

Q73. What is the meaning of the term "Price is not the sole consideration"?

Ans. Under the GST law, consideration can be in "money or otherwise", and includes the monetary value of an act or forbearance, in relation to a supply. Consideration may also flow from any person other than the recipient. In cases, where the money received in respect of the supply is not the sole consideration, the "price is not the sole consideration". E.g. Buyer of capital goods discharges the loan of seller, goods purchased on exchange offer, etc.

Q74. Will discounts given to customers be allowed as deduction from transaction value?

Ans. Yes, the following two types of discounts would be excluded from transaction value:

- Discount at the time of Sale – Allowed as a deduction, provided if the discount is recorded on the face of invoice.
- Post-supply Discount – If such discount is based on the arrangement entered into before or at the time of supply, AND where the same can be linked to relevant invoices, then the same is allowed as a discount on the condition that the recipient reverses the input tax credit related to such discount availed earlier.

Q75. Quantity discounts are not recorded on the face of the invoice. Can the Quantity discounts be claimed as deduction while computing GST?

Ans. Quantity Discounts are allowed based on the volume / value of purchases made by the customer for a particular period. The discount is allowed at the end of a particular period based on the pre-agreed rates entered into between the supplier and the recipient. Such discounts will be eligible for exclusions by way of credit notes, only where the supplier is in a position to link the discount to each and every invoice, and the recipient reverses the credit to the extent of such discount.

Q76. Whether all expenses incurred by supplier are excluded from the value of supply?

Ans. No, In terms Rule 33 of the CGST Rules, 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:

- (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.

Q77. Which exchange rate needs to be considered for determining the value of supply in case if transaction is undertaken in foreign currency?

Ans. In terms of Rule 34 of the CGST Rules, rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods. And rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services.

Q78. ABC Gas sells cooking gas cylinders. Subsidy directly transferred to the account of the customer whose account are linked with Aadhar card. Selling price per cylinder is Rs. 900. Customer received subsidy Rs. 300 directly from Government to his bank account. Net outflow of the buyer is Rs. 600. Find the value of supply of goods (per cylinder) in the hands of ABC Gas. Calculate assessable value to levy tax.

Ans. Supplier is liable to pay GST on transaction value which shall be exclusive of subsidy received from government. However, exclusion of subsidy is applicable if Government is paying that to the supplier for making the supply.

In this case, Government has not paid subsidy to the supplier, rather it has been paid to the buyer directly. Supplier is not impacted by such subsidy. He shall be liable to pay whatever transaction value he has charged to buyer.

Hence, transaction value is Rs. 900 per cylinder.

Q79. ABC owns a coaching institute in Hyderabad. The institute charges Rs. 18,000 per student for giving training in international taxation. However, this training programmes is subsidized by different institutions as follows
– State Government of Telangana : Rs. 500 per student, XYZ Charitable

**Trust : Rs. 200 per student and Government of USA: Rs. 200 per student.
Calculate tax liability assuming CGST & SGST @ 9% each.**

Ans. In this case, subsidies given by different institutions are directly linked to the price charged by ABC. State Government subsidy can be excluded but subsidy paid by others will be included in taxable value.

Value of taxable supply = Rs. 18,000 – Rs. 500 (subsidy from Government of Telangana) = Rs. 17,500 GST Tax Liability

CGST = Rs. 17,500*9%= Rs. 1,575

SGST = Rs. 17,500*9%= Rs. 1,575

Q80. ABC has provided the following details relating to goods sold.

Particulars	Amount
List price of the goods (excluding of taxes, subsidy and discounts)	50,000
Tax levied by Municipal Authority	5,000
Packing charges (not included in the price above)	2,000
Subsidy received from NGO	2,500
Trade discount offered @ 2% on list price	
Recipient pay 10% brokerage on list price at the request of supplier	
Recipient pay freight & insurance charges on behalf of supplier	5,000

Calculate the value of taxable supply.

Ans. Statement showing calculation of value of taxable supply

Particulars	Amount
List price of the goods (excluding of taxes and discounts)	50,000
Add:-	
Tax levied by Municipal Authority {included in the value as per section 15 (2) (a)}	5,000
Packing Charges {included in the value as per section 15 (2) (c)}	2,000
Subsidy received from NGO {since subsidy is received from a non-government body, the same is included in the value of terms of section 15 (2) (e)}	2,500
Recipient pay 10% brokerage on the request of supplier {included in the value as per section 15 (2) (b)}	5,000
Recipient pay freight & insurance charges on behalf of supplier {included in the value as per section 15 (2) (b)}	5,000
Total	69,500
Less: Trade discount {since discount is known at the time of supply, it is deductible from the value of terms of section 15 (3) (a)}	1,000
Value of Taxable Supply	68,500

Q81. ABC buys the 'Super Motor' in Rajasthan from XYZ. Both agreed for the below conditions: Value of Motor (including GST @ 5%) Rs. 3,00,000

Taxes (other than GST) paid - Not included in above value Rs. 5,000

Below items are being paid by recipient though supplier is liable to pay

Freight Expenses **Rs. 3,500**

Consultancy charges for erection **Rs. 2,000**

Testing Charges **Rs. 500**

Insurance Charges **Rs. 4,500**

Other details:-

Subsidy received from Rajasthan Government (deducted from value) **Rs. 10,000**

Subsidy received from manufacturer for supply of power generator (deducted from value) **Rs. 25,000**

Trade discount shown in Invoice **Rs. 2,000**

Cash discount due to instant payment **Rs. 5,500**

If such supply is inter-State supply, calculate the value of taxable supply and GST.

Ans.

Sr. No.	Action	Particulars	Amount	Remarks
1		Value of Motor	3,00,000	
2	Add	Taxes (other than GST) paid	5,000	Section 15 (2) (a) – Value of supply shall include any taxes, duties, cesses, fees and charges levied under any law other than GST
3	Add	Freight Expenses	3,500	Section 15 (2) (b) – Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of supply.
4	Add	Consultancy charges for erection	2,000	
5	Add	Testing Charges	500	
6	Add	Insurance Charges	4,500	
7	Add	Subsidy received from manufacturer	25,000	Section 15 (2) (e) – Value shall include subsidies directly linked to the price excluding subsidies provided by the CG/SG.
8	Less	Trade Discount	- 2,000	Section 15 (3) (a) – Value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply.

9	Less	Cash Discount	-5,500	Section 15 (3) (b) – Value of the supply shall not include any discount which is given after the supply has been effected, if such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices.
10	Total	Value (including GST Value)	3,33,000	
11	Less	IGST @ 5% {Rs. 3,33,000*5/105}	15,857	Inter-State supply
12	Net	Taxable Value	3,17,143	

Q83. ABC is facing serious liquidity problems and requests XYZ to pay within 2` days. It offers additional 1% cash discount. XYZ agrees and pays.

Ans. As per section 15 (3) (b), this discount was not known at the time of supply, and so it cannot be claimed as a deduction from the transaction value for GST calculation.

Q84. ABC Ltd. is a registered manufacturer of pendrive. It sells its pendrive exclusively through distributors appointed across the country. The MRP printed on package of a pendrive is Rs. 1,000. ABC Ltd. sells the pendrives to distributors at Rs. 700 per pendrive (exclusive of GST). The applicable rate of GST is 18%.

The stock is dispatched to the distributors on quarterly basis – stock for a quarter being dispatched in the second week of the month preceding the relevant quarter. However, additional stock is dispatched at any point of the year if the company receives a requisition of that effect from any of its distributors. The company charges Rs. 100 per pendrive from distributors (excluding all charges and taxes).

The company has a policy of offer a discount of 10% on pendrive supplied to the distributors for a quarter, if the distributors sell 500 pendrives in the preceding quarter. The discount is offered on the price at which the pendrive are sold to the distributors (excluding all charges and taxes).

The company appoints XYZ Ltd. as a distributor on 1st April and dispatches 750 pendrives on 8th April as stock for the quarter April-June. XYZ Ltd. places a purchase order of 1000 pendrives with the company for the quarter July - September. The order is dispatched by the company on 10th June and the same is received by the distributor. The distributor reports sale of 700 pendrives for the quarter April-June and 850 pendrives for the quarter July-September. Compute the taxable value for the quarter July-September in respect of transaction between ABC & XYZ Ltd.

Ans. As per section 15 (3) (b), the value of supply shall not include any discount which is after the supply has been affected, if

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices, and

(ii) ITC as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

XYZ Ltd. is entitled to 10% discount on pendrives supplied by ABC Ltd. for the quarter July-September as it has sold more than 500 pendrives in the preceding quarter. However, since the entire stock for the quarter July-September has already been dispatched by ABC Ltd. in the month of June, the discount on the pendrives supplied to XYZ Ltd. for the quarter July-September will be post-supply discount. This discount shall be allowable since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices provided XYZ Ltd. reverses the ITC attributable to the discount on the basis of credit note issued by ABC Ltd.

Value of Taxable Supply (Amount in INR):

Price at which the pendrives are supplied to XYZ Ltd.	700
Add: Packing Charges {incidental expenses need to be added as per section 15 (2) (c)}	100
Less: Discount {As explained above all the conditions specified in section 15 (3) (b) have been satisfied, so the post-supply discount will be allowed, subject to reversal of ITC by XYZ Ltd.}	-70
Value of Taxable supply of one unit of pendrive	730
Value of Taxable supply of 1000 units supplied for the quarter July-September (Rs. 730*1000)	7,30,000

Note:-XYZ Ltd. need to reverse ITC = Rs. 70 discount * 1000 * 18% = Rs. 12,600.

Q85. ABC provides management consultancy to a group of companies for annual retainership fees of Rs. 22 Lakhs. It is given an office cabin in head office of the group for its exclusive use. ABC pays GST on the amount of Rs. 22 Lakhs. Is the value for the service provided by ABC, correct under GST laws? Please explain.

Ans. The value of Rs. 22 Lakhs for the service provided by ABC, is not correct under GST laws. ABC gets an office cabin free of cost, which is an additional non-monetary consideration for its services. The market value of the rent of the room must be added to the fees (Rs. 22 Lakhs) in order to arrive at the value of the taxable service provided by ABC, as per Rule 27 of CGST Rules 2017.

Q86. Mr. A located in Pune purchases 2,000 parker pen for Rs. 2,00,000 from ABC Ltd. (wholesaler) located in Indore. Mr. A's son is an employee in ABC Ltd. The price of each parker pen in the open market is Rs. 120. The

supplier additionally charges Rs. 5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. A and ABC Ltd. would not be treated as related persons merely because the son of the recipient is an employee of the supplier, although such son and the supplier would be treated as related persons (employer and employee relationship).

Therefore, the transaction value will be accepted as the value of the supply. Transaction value will be Rs. 2,00,000+Rs. 5,000 = Rs. 2,05,000. IGST will be leviable since it is inter-State transaction.

Q87. ABC Ltd. owned by XYZ Ltd. is popularly known for assembly of large machines. PQR Ltd. (also owned by XYZ Ltd.) is engaged in fabrication of small machines. A factory contracts ABC Ltd. of its machinery, for a fee of Rs.

6,00,000. ABC Ltd. sub-contracts the work to PQR Ltd. for Rs. 4,00,000 and ensures supervision of the work performed by them. Generally, PQR Ltd. charges a fixed sum of Rs. 1,200 per man hour to its clients; it spends 400 hours on this project. Determine taxable value of supply.

Ans. Since ABC Ltd. & PQR Ltd. is controlled by XYZ Ltd., the two companies will be treated as related persons. Therefore, Rs. 4,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service shall be open market value being Rs. 4,80,000 (Rs. 1,200*400).

Q88. ABC Insurance provides you the following information for the month of September, 2018. You are required to compute value of taxable supply of services under Rule 32 (4) of Determination of value of supply Rules, 2017.

- 1. General policies: Total premiums collected Rs. 12,000 Lakhs (out of which 1st year premium is Rs. 5,000 Lakhs)**
- 2. Single premium annuity policies : Premium collected Rs. 850 Lakhs**
- 3. Only risk cover policies : Premium collected Rs. 500 Lakhs**
- 4. Life micro-insurance policies where insured amount does not exceed Rs. 2,00,000 : Premium collected Rs. 10 Lakhs.**
- 5. Variable Insurance Policies : Premium collected Rs. 8,000 Lakhs. (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts).**

Ans. Computation of value of taxable supply of services (Rs. In Lakhs):

Particulars	Amount	Rate	Taxable Value
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General policies:			
(i) First year premium	5,000	25%	1,250
(ii) Subsequent years i.e. policies issued in earlier years	7,000	12.5%	875
Single premium annuity policies	850	10%	85
Only Risk cover policies since the entire premium is for risk cover, hence, the option under Rule 32 (4) is not available.	500	100%	500
Life micro-insurance policies {Exempt vide Entry 36 of Notification no. 12/2017-Ct (Rate)}	10	Exempt	-
Variable Insurance Policies [Gross Premium – Amount allocated towards investment]	8,000	-	1,600
Total Taxable Value			4,310

Q89. AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten or specified chemical residues. AKJ Foods Pvt. Ltd. does the testing and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fess should not form part of the consideration for the sale as it is a separate activity.

Is his argument correct in the light of section 15?

Ans. Section 15(2) mandates the addition of certain elements to transaction value to arrive at taxable value. Clause (c) of section 15(2) specifies that amount charged for anything done by the supplier in respect of the supply at the time of or before delivery of goods or supply of services shall be included in taxable value.

Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges therefor will be included in the taxable value. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be added to the price to arrive at taxable value of the consignment.

Q90. A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidise the education of low income group students who have gained admission there. The fee for these individuals is reduced thereby, coming to Rs. 3 lakh a year compared to Rs. 5 lakh a year for other students.

What would be the taxable value of the service of coaching and instruction provided by the institution?

Ans. As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not from the Government but is from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the taxable value, which comes to Rs. 5 lakh a year.

Q91. Rare Polymers Private Ltd. was the only Indian company making and selling a polymer 'x' to companies, who used this as a raw material. However, the international prices of 'x' dropped, and the companies began to import it rather than buying from Rare Polymers.

The promoters then set up another company, which had a manufacturing unit that could use 'x', with common directors and senior management for better integration of functionality. Rare Polymers began to supply 'x' to this related concern at low margins. The related concern was not eligible for full ITC. GST was paid on the price charged.

Was the value adopted by Rare Polymers for supply of 'x' to its related concern, correct? Elaborate.

Ans. The value was not correct. The invoice value could not be the basis of valuation for a supply made to a related person if the recipient is not eligible for full ITC. Under rule 28(a) of the CGST Rules relating to valuation, the open market value of polymer 'x' should be the value of the taxable supply of 'x' to the related concern.

In this particular case, the open market value is likely to be the price of imported 'x' plus customs duties, which should be adopted for valuation after excluding the component of IGST on import as per the definition of open market value in explanation (a) to the CGST Rules relating to valuation.

Q92. The supplies of commodity 'y' to the market are channelled through a State Marketing Corporation which conducts an auction each day to arrive at the price. Gupta and Co. supplies commodity 'y' through the State Marketing Corporation.

How will this supply of 'y' by Gupta and Co. be valued for paying tax?

Ans. The State Marketing Corporation is an 'agent' in the meaning of the expression as defined in section 2(5), which includes an auctioneer. Therefore, the value of supply of 'y' will be determined in terms of rule 29 of CGST Rules relating to valuation.

There is no open market for the first supply of commodity 'y', as it is compulsorily supplied to the State Marketing Corporation. Therefore, the choice before Gupta & Co. for valuing the supply of 'y' is between the open market value at which 'y' is sold by the State Marketing Corporation or 90% of price of goods of like kind and quality sold by the State Marketing Corporation to its unrelated customers.

If the value cannot be determined by either of the two methods, it needs to be determined on the basis of the cost plus 10% mark up as per rule 30 or on the basis of Best Judgement Method as per rule 31, in that order.

Q93. Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon has a face value of Rs. 900 but is redeemable for supplies worth Rs. 1000.

What is the value of supply of such coupon under GST laws?

Ans. In terms of rule 32(6) of the CGST Rules relating to valuation, the value of a coupon is the money value of the goods redeemable against it. Therefore, though the coupon is sold for Rs.900, its value is Rs.1,000.

Q94. A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. These supplies are taxable as per Schedule I of the CGST Act. The product is exclusive to this company, and there is no market sale in India of this drug intermediate.

How will the value of the supply of this drug intermediate be determined under GST laws?

Ans. Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 of CGST Rules relating to valuation.

There is no open market value of the drug intermediate as also there are no like goods. Therefore, value of supply of such drug intermediate will be determined in terms of clause (c) of rule 28 i.e., by using rule 30. Thus, the value of supply of such drug intermediate will be 110% of its cost of production or manufacture.

However, if the recipient unit is eligible for full ITC, the value declared in the invoice will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply

Q95. Whether Input tax credit on Inputs and Capital Goods is allowed in one installment?

Ans. Yes. Input tax credit will be available in full with respect to inputs and capital goods, subject to fulfillment of the prescribed conditions under section 16(2) of the CGST Act. Even in the case of supply of goods in lots/ instalments, the credit would be available in full on the receipt of the last lot/ installment.

Q96. One of the conditions to claim credit is that the receiver is in possession of tax invoice or debit note or any other tax paying documents. What are these tax paying documents?

Ans. The tax paying documents have been prescribed under Rule 36 of the CGST Rules. The ITC shall be availed by a registered person [including the Input Service Distributor (ISD)] on the basis of any of the following documents:

- An invoice issued by supplier of goods or services or both as per section 31;
- An invoice raised by the recipient in case of inward supplies from unregistered persons or reverse charge mechanism supplies, subject to payment of tax;
- A debit note issued by a supplier of goods or services or both as per section 34;
- A bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- An Input Service Distributor (ISD) Invoice or ISD Credit Note or any other document issued by an Input Service Distributor for distribution of credit as per rule 54(1).

Q97. In case the amount is paid partly to the supplier of service, whether full taxes can be adjusted first? If no, then, whether it has to be calculated proportionately?

Ans. No, there is no provision under the GST law to allocate part payment of the invoice towards the taxes first so that the input tax credit can be allowed. Second proviso to Section 16(2) of the CGST Act clearly provides that the entire value of supply (with tax) is to be paid within 180 days from the date of issue of invoice. Therefore, as long as the entire payment is made within 180 days, the recipient would be entitled to claim the credit in full.

Assuming that only part payment is made within 180 days, availing of proportionate credit based on such part payment is not provided for under the CGST Act. However, Rule 37(1) of the CGST Rules provides for availability of the amount of input tax credit availed of proportionate to the amount paid to the supplier.

Q98. One of the conditions to claim credit is that the receiver has received the goods. Is there any provision for deemed receipt of goods in case of transfer of document of title before or during the movement of goods?

Ans. Yes. Explanation to Section 16(2)(b) of the CGST Act provides for deemed receipt of goods where the goods are delivered by the supplier to the recipient or any other person on the direction of the recipient, whether acting as agent or

otherwise, before or during movement of goods either by way of transfer of document of title to goods or otherwise.

Q99. What is the maximum time limit to claim the Input tax credit?

Ans. In terms of Section 16(4) of the CGST Act, a registered person is not entitled to claim input tax credit in respect of any supply of goods or services after the earlier of following two events:

- a) Due Date of filing of the return under Section 39 of the Act for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, i.e. 20th October;
- b) Furnishing of the annual return. In terms of Section 44, the due date of filing annual return is 31st December following the end of the financial year.

However, as provided in Rule 37(4), the above time limit is not applicable where a claim is made for re-availing of any credit that had been reversed earlier due to non-payment of consideration within 180 days of date of issue of invoice by the supplier.

Further, in cases of credit in special circumstances like new registration, voluntary registration, etc. the credit will not be available after the expiry of one year from the date of issue of tax invoice.

Q100. A person has a single GST registration in respect of two different trade names. Can he set off input tax credit from one trade name against the output tax liability of the other?

Ans. All input tax credits can be set off against the output tax liability of the same GSTIN irrespective of the different businesses or trade names present for a particular taxable person.

Q101. Whether input tax credit is allowed on inputs which become waste and is sold as scrap?

Ans. In the process of manufacture, if some inputs become waste and are sold as scrap, credit shall not be denied. Further, output tax shall be payable on sale of such waste/scrap. However, Section 17(5) (h) specifically restricts input tax credit on goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. Therefore, if the goods have been destroyed in full, input tax credit will not be available.

Q102. Whether Input destroyed/ pilfered, and shortage also is covered?

Ans. Yes. Section 17(5)(h) specifically restricts input tax credit on goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. Therefore, input tax paid on goods which are destroyed/pilfered and where shortage has occurred will not be eligible.

Q103. Whether Input tax credit is available in respect of Input tax paid on use of mobile phones/laptops/as given to employees?

Ans. Yes. The mobile phones/ laptops would be covered under the definition of 'capital goods' as they are used in the course/ furtherance of business and hence, the input tax paid on such goods will be available as input tax credit.

Q104. Whether tax paid on repairs, maintenance and insurance of Motor Vehicles for transportation of persons used for the purpose of business is eligible for ITC?

Ans. The input tax credit is blocked on the repairs, maintenance and general insurance of those motor vehicles on which input tax credit is blocked under Section 17(5)(a) of the CGST Act 2017.

Q105. Can input tax credit be claimed on a truck or any goods vehicles when used for transportation of goods?. Also comment whether repairing, maintenance and insurance of such vehicles will be allowable as credit ?

Ans. Input tax credit is not blocked on any motor vehicles for transportation for goods. Also, any expenses in the form of repairs, maintenance and general insurance of motor vehicles credit of which is not blocked under Section 17(5)(a) of the CGST Act 2017 will be allowable as input tax credit under GST. So, it should be allowed as input tax credit.

Q106. Whether benefit of input tax credit would be available if the company procures health insurance services for benefit of its employees. Please assume that the procurement of such services is mandatory under Factories Act?

Ans. Yes. Section 17(5)(b) of the CGST Act provides that tax paid w.r.t health insurance services will be eligible as input tax credit where the Government notifies that such services are obligatory for an employer to provide to its employees under any law for the time being in force. If not notified by the Government then it is not available.

Q107. Whether input tax credit of goods or services should be claimed on the ground that a building has been used in the course or furtherance of business if that building is constructed for providing renting of immovable property services?

Ans. Section 17(5)(d) of the CGST Act 2017 states that input tax credit is blocked on goods or services received by a taxable person for construction of an immovable property on his own account. Only if he does not wish to retain the property but provide further supplies of works contract services, input tax credit can be allowed. This means that a person who receives on the property on own account will not be liable to input tax credit. The after use of the property is immaterial once the title of the property belongs to the recipient. So, input tax credit will not be available in respect of goods or services used for construction of property even though the intent is to provide the said property on rent.

Q108. Whether recovery provisions can be initiated in case of wrong distribution of credit by ISD?

Ans. Yes. In terms of Section 21 of the Act, the recovery provisions can be initiated if the Input Service Distributor distributes credit in contravention of the law resulting in excess distribution of credit to one/ more recipients of credit. Such credit can be recovered from the recipients along with applicable interest and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Q109. What are the set off provisions for CGST, SGST, IGST within the same state and outside the state?

Ans. On every transaction (within a state), there will be component of Central GST (CGST) and State GST (SGST). Integrated GST (IGST) would be levied for inter-state transactions.

Utilization of Input Tax Credit of CGST

The tax credit CGST shall be first utilized towards the payment of output CGST and then towards the payment of output IGST. However, ITC of CGST cannot be used to adjust SGST.

Utilization of Input Tax Credit of SGST

The tax credit SGST is allowed to be utilized towards payment of SGST and IGST in that order. However, ITC of SGST cannot be used to adjust CGST. Further, ITC of SGST paid in one state cannot be utilized to set off against the output SGST of another state.

Utilization of Input Tax Credit of UTGST

The tax credit UTGST is allowed to be utilized towards payment of UTGST and IGST in that order. However, ITC of UTGST cannot be used to adjust CGST/SGST

Utilization of Input Tax Credit of IGST

The amount of ITC on account of IGST is allowed to be utilized towards payment of IGST and then for CGST or SGST/UTGST in any order or any manner.

Q110. Can input credit be claimed in respect of any compensation cess paid for supplies notified by the GST council?

Ans. In terms of proviso to Section 11(2) of the Goods and Services Tax (Compensation to States) Act, 2017, the input tax credit in respect of cess on supply of goods and services leviable under section 8 of the same Act, shall be utilized only towards payment of said cess or supply of goods and services leviable under the said section. Therefore no cross utilization with other taxes are allowed.

Q111. Mr. Amit, a supplier of goods, pays GST under regular scheme. He is not eligible for any threshold exemption.

He has made the following outward taxable supplies in the month of August, 2017 – Intra-State supplier of goods 6,00,000, Inter-State supplies of goods 2,00,000. He has also furnished following information in respect of purchases made by him from registered dealers during August, 2017 – Intra-State purchase of goods 4,00,000, Inter-State purchase of goods 50,000. Balance of ITC available at the beginning of the August 2017 – CGST 15,000, SGST 35,000, IGST 20,000. Compute the net GST payable by Mr. Amit for the month of August, 2017.

Note : (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively, on both inward and outward supplies (ii) Both inward and outward supplies given above are exclusive of taxes, wherever applicable (iii) All the conditions necessary for availing the ITC has been fulfilled.

Ans.

(A) Tax payable

Description	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Inter-State taxable supply of goods - Rs. 2,00,000 - IGST @ 18%			36,000
Intra-State taxable supply of goods - Rs. 6,00,000 - CGST @ 9% and SGST @ 9%	54,000	54,000	
Total Tax Payable	54,000	54,000	36,000

(B) ITC Available

Description	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Opening Balance	15,000	35,000	20,000
Intra-State Purchases {Rs. 4,00,000 - CGST 9% & SGST @ 9%}	36,000	36,000	
Inter-State Purchases {Rs. 50,000 - IGST @ 18%}			9,000
Total ITC available	51,000	71,000	29,000

(B) Net Tax Payable

Description	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Total Tax Payable	54,000	54,000	36,000
Less ITC available	51,000	71,000	29,000
Net Payable	3,000	NIL	7,000
Less Cross Utilization	NIL	NIL	-7,000
Net Tax Payable	3,000	NIL	NIL
Excess ITC carried forward	NIL	10,000	NIL

Q112. M Ltd. Hyderabad procured goods 10,000 Kgs @ Rs. 100 per Kg. from K Ltd. of Kolkata. These goods came to M Ltd. of Hyderabad in the following manner:

Date of Dispatch	No. of Kgs dispatched	Date of receipt	Transit Losses	No. Kgs received
10 th October 2017	3,000	15 th November 2017	NIL	3,000
2 nd November 2017	4,000	20 th November 2017	NIL	4,000
3 rd December 2017	3,000	1 st January 2018	20	2,980

Invoice shows 10,000 Kgs and IGST @ 18%. You are required to answer:

- M Ltd. can avail the proportionate credit on 15th Nov 2017 and 20th Nov 2017.
- When can M Ltd. be eligible for input tax credit?
- How much credit is allowed to M Ltd.

Ans. (a) M Ltd. cannot take proportionate credit on the quantity received on 15th November 2017 and 20th November 2017.

(b) M Ltd. is eligible to avail the input tax credit on 1st January 2018.

(c) Input tax credit allowed = Rs. 1,79,640/- (10,000 Kgs x Rs. 100) x 18% x 9980 kgs/10,000 kgs.

Note:

- (i) Goods received in lots ITC available only on receipt of last lot/installment [1st proviso to Sec 16(2)]
- (ii) ITC is admissible only upon receipt of goods. Thus, ITC not admissible in respect of goods not received.

Q113. M/s X Ltd. has establishment in Chennai, and establishment in Hyderabad. Supply of goods (open market value of Rs. 5,00,000) made by M/s X Ltd. Chennai to M/s X Ltd. Hyderabad. M/s X Ltd. Chennai paid IGST of Rs.

60,000. Accordingly M/s X Ltd. Hyderabad availed the input tax credit of Rs. 60,000. 2nd Proviso to Section 16(2) of CGST Act, 2017 is applicable in the given case (i.e. to reverse the credit where payment is not made within 180 days from the date of invoice). Discuss.

Ans. As per proviso to rule 37(1) of the CGST Rules, 2017, the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. In the given case M/s X Ltd. Hyderabad is not required to reverse the input tax credit. Since, as per Section 25(4) of the CGST Act, 2017 two establishments are considered as establishment of distinct person and accordingly, supply made by one establishment to another establishment will be covered under Schedule I without consideration.

Q114. XYZ Ltd. is engaged in supply of passenger transportation services. In the month of September, 2017, it has purchased two motor vehicles for Rs. 18,00,000 plus GST @28%. You are required to advise XYZ Ltd. if it can avail Input tax credit of the GST paid by it on motor vehicles.

Ans. As per Section 17(5), input tax credit shall not be available in respect of Motor vehicles and other conveyance. However, credit will be available when they are used for making the taxable supplies of transportation of passengers. In this case XYZ Ltd. is engaged in transportation of passengers it will be entitled to take credit of GST amounting Rs. 5,04,000 i.e. [Rs. 18,00,000 × 28%]

Q115. ABC Bank has purchased a van for transportation of cash (money). Whether ITC of such motor van is admissible?

Ans. The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Motor van is a motor vehicle, ITC of

which is allowed if used for transportation of goods. Under GST law, Cash/money is neither goods nor service (Sec 2(52) and Sec 2(102) of CGST Act). Since cash/money cannot be considered as 'goods', Axis Bank is not eligible for ITC of motor vans purchased by it for transportation of cash.

Q116. ABC Ltd. is engaged in supply of transport of passengers by air services. The company avails outdoor catering services of XYZ Caterers in order to provide food and beverages to the passengers. XYZ Caterers raises an invoice on ABC Ltd charging GST.

ABC Ltd. wants to avail the ITC on outdoor catering services supplied by XYZ Caterers. Advise.

Ans. ITC shall be available where an inward supply of goods or services or both of a particular category is used by a registered person as an element of a taxable composite or mixed supply.

In the given case, ABC Ltd will be entitled to avail the ITC of the GST paid to XYZ Caterers since outdoor catering services forms part of taxable composite supply of passengers by air services.

Q117. ABC Ltd is a BPO which works on night shift basis. As per the Government Guidelines for BPO Sector, it has to provide rent a cab facilities to its employees who work on night shifts. Whether, ABC Ltd. is eligible to avail ITC on rent a cab services.

Ans. No, ABC Ltd cannot claim ITC on the GST paid on such rent-a-cab services. The reason being that such credit is not admissible unless Govt. issues a notification allowing such credit.

Q118. Mr. A of USA being technician came to India to assemble parts of machinery. He also imported goods worth Rs. 10,00,000 and paid following customs duties:

(i) Basic customs duty is Rs. 1,00,000.

(ii) Integrated Goods and Services Tax (IGST) of Rs. 1,98,540.

In India Mr. A wants to register as non-resident taxable person and his estimated liability is Rs. 2,50,000. How much Mr. A is liable to pay as advance tax?

Ans. Mr A is Non-resident taxable person. NRTP needs to pay tax in advance before he is granted registration certificate. NRTP is entitled to book credit of goods imported by him. However, only IGST paid on imported goods is eligible 'input tax'.

Thus, ITC admissible to him is Rs 1,98,540.

Considering the admissible amount of ITC, Mr. A of USA is liable to pay advance tax of Rs. 51,460. (i.e. Rs. 2,50,000 – 1,98,540)

Q119. ABC Bank, having a branch in Jaipur engaged in supply of services by way of accepting deposits and extending loans opted for Section 17(4). Its head office is in Hyderabad and branch in Jaipur. ITC (CGST & SGST) available for the month August, 2017 is Rs 90,000. Determine the amount of admissible ITC for ABC Bank, Jaipur Branch. Total ITC of 90,000 includes credit relating to :

Particulars	Input Tax (CGST & SGST)
1. Services availed from from Hyderabad Head Office (deemed distinct person under GST law)	18,000
2. Outdoor catering services received for its employees	16,900
3. Auditing Services	22,500
4. Goods which are used for personal use of employees	6,500

Ans.

Statement showing ITC eligibility for ABC Bank (Jaipur Branch) which has opted for Section 17 (4)

Particulars	Input Tax (CGST & SGST)
1. Services availed from from Hyderabad Head Office (deemed distinct person under GST law) – Deemed supply between distinct person - <u>Full ITC available</u>	18,000
2. Outdoor catering services received for its employees {Blocked Credit U/s 17 (5)}	Not Allowed (Allowed @ 50%)
3. Auditing Services	Not Allowed
4. Goods which are used for personal use of employees {Blocked Credit U/s 17 (5)}	
ITC available (90,000 – 16,900 – 6,500 – 18,000) = 48,600 @ 50%	24,300
Total Admissible ITC (available for utilization for August Month GST liability)	42,300

Q120. X is a chartered accountant by profession. He gives the following information pertaining to October 20XX —

1. Consultancy given to different clients during October 20XX (but not

including the transactions given below) (invoice value : Rs. 35,70,000).

2. Consultancy given to A Ltd. (invoice value : Rs. 8,000, market value of supply : Rs. 50,000, X holds 40 per cent shares in A Ltd.)
3. Consultancy given to B (invoice value : nil, market value of supply : Rs. 48,000, B is not a relative of X).
4. Consultancy given to Mrs. X (invoice value : nil, market value of supply : Rs. 75,000, Mrs. X is not dependent upon X).
5. Consultancy given to C, younger brother of X (invoice value : nil, market value of supply : Rs. 60,000, C is not dependent upon X).
6. Consultancy given to D, elder brother of X (invoice value : nil, market value of supply : Rs. 70,000, D is dependent upon X).
7. Consultancy given to E, an employee of X (invoice value : nil, market value of supply : Rs. 80,000).

Above figures are exclusive of GST. GST is 18%. Calculate the amount of GST payable by X for October 20XX. He want to avail input tax credit —

- Balance available in electronic credit ledger on October 1, 20XX : Rs. 22,000
- Fees paid to a chartered accountant pertaining to tax audit of X (taxable value : Rs. 20,000, GST : Rs. 3,600).
- GST paid on food and beverages for employees / clients (amount of GST being Rs. 8,000).
- Motor car purchased for official use of employees (amount of GST being Rs. 2,80,000).
- Motor car purchased for private use of X and his family (amount of GST being Rs. 7,00,000).
- Membership of a club taken by X for entertaining official guests (amount of GST being Rs. 18,000).
- Fees paid to a consultant pertaining to transfer pricing matter of a client (amount of GST being Rs. 20,000).

Ans.

Particulars	Amount (Rs.)
Consultancy given to different clients	35,70,000
Consultancy given to B (B is not a relative of X, price is sole consideration, transaction value to be considered)	50,000
Consultancy given to B (B is not a relative of X, price is sole consideration, transaction value to be considered)	Nil
Consultancy given to Mrs. X (Mrs. X is "related person", open market value to be considered)	75,000
Consultancy given to C, younger brother not dependent upon X (C does not come in the list of "related persons", GST applicable on transaction value on the assumption that price is sole consideration)	Nil
Consultancy given to D, elder brother dependent upon X (related person, GST on open market value)	70,000
Consultancy given to E, an employee of X (employer and employee are related persons, gift to employees which is not covered by employment agreement is chargeable to GST on the basis of market value. Exemption of Rs. 50,000 is	80,000

available) invoice value : nil, market value of supply : Rs. 80,000).		
Total Outward Supply		38,45,000
GST @ 18%		6,92,100
Less:- Input Tax Credit		45,600
Balance available in electronic credit ledger on October 1, 20XX	22,000	
Fees paid to a chartered accountant pertaining to tax audit of X	3,600	
GST paid on food and beverages for employees / clients (not eligible)	Nil	
Motor car purchased for official use of employees (not eligible)	Nil	
Motor car purchased for private use of X and his family (not eligible)	Nil	
Membership of a club taken by X for entertaining official guests (not eligible)	Nil	
Fees paid to a consultant	20,000	
Balance to be paid through electronic cash ledger		6,46,500

Q121. X Ltd. provides services pertaining to retail packing of goods. This service is provided in Punjab to manufacturing units and plantation units. It gives the following information pertaining to January 2018:

1. Service by way of waxing, retail packing, labelling of apples provided to A Plantation (P.) Ltd., Ludhiana (invoice value : Rs. 17,10,000).
2. Service by way of packing and labelling of chemical goods provided to B Ltd. (invoice value : Rs. 28,00,000).
3. Service by way of packing of leather goods provided to C Ltd. (invoice value : Rs. 3,00,000, market value of similar service to unrelated persons : Rs. 6,50,000).
4. Service by way of waxing and packing of wooden toys provided to D Ltd. (invoice value : Rs. 5,00,000). X owns 60 per cent shares in X Ltd. and Mrs. X owns 40 per cent shares in C Ltd.

Above figures are exclusive of GST. GST rate is 18 per cent. The above invoices are issued during January 2018. Payment is received from A Plantation (P.) Ltd. on January 27, 2018. Payment from B Ltd. and C Ltd. is received on February 12, 2018. Nothing is received from D Ltd. so far. On January 31, 2018, X Ltd. gets an advance payment of Rs. 50,000 from E Ltd. for packing of goods which will be manufactured during 2018-19 (GST rate is 18 per cent, Rs. 50,000 is for providing services in future, nothing is received on account of GST).

Calculate the amount of GST payable by X Ltd. for January 2018. X Ltd. wants to avail input tax credit —

- Balance available in electronic credit ledger on January 1, 2018 : Rs. 61,000.
- Fees paid to an interior decorator for canteen of X Ltd. (taxable value

: Rs. 10,000, GST : Rs. 1,800).

- Membership of health club for employees (amount of GST being Rs. 17,000).

Ans.

Particulars	Amount (Rs.)
Service by way of waxing, retail packing, labelling of apples provided to A Plantation (P.) Ltd. [it is exempt from GST vide Exemption Notification (Entry 57)]	Nil
Service by way of packing and labelling of chemical goods provided to B Ltd.	28,00,000
Consultancy given to B (B is not a relative of X, price is sole consideration, transaction value to be considered)	6,50,000
Service by way of waxing and packing of wooden toys provided to D Ltd.	5,00,000
Advance payment from E Ltd. (Rs. 50,000 × 100 ÷ 118)	42,373
Total Outward Supply	39,92,373
GST @ 18%	7,18,627
Less:- Input Tax Credit	62,800
Balance available in electronic credit ledger on January 1, 2018	61,000
Fees paid to an interior decorator for canteen	1,800
Membership of health club for employees (not eligible)	Nil
Balance to be paid through electronic cash ledger	6,55,827

Q122. ABC Ltd. purchased goods valuing Rs. 10,00,000 (excluding CGST @ 2.5% & SGST @ 2.5%) under the cover of invoice dated 25th December 2017. The company made the payment to the supplier as per due date. The company has not taken ITC at the time of receipt of input since there was a doubt regarding admissibility of tax credit. It legal consultant has opined that it can very much avail ITC on such inputs. The opinion was received on 5th May 2018. ABC Ltd. now would like to avail ITC. Can it do so? ABC Ltd. has filed its annual return for the year 2017-18 on 12th August 2018.

Ans. As per Section 16(4), a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after

- The due date of furnishing of the return U/s 39 for the month of September following the end of financial year to which such invoice pertains; or
- Furnishing of the relevant annual return, Whichever is earlier.

In this case the inputs were purchased by invoice dated 25th December 2017, hence ITC in respect of such inputs can be taken on earlier of the following dates-

- 20th Oct'18 being due date of furnishing return of month of Sept'18;
- 12th Aug'18 being the date of furnishing of annual return.

ABC Ltd. can avail ITC till 12th Aug'18. Therefore, it can avail credit of CGST Rs. 25,000 & SGST Rs. 25,000.

Q123. A registered supplier of taxable goods supplied goods valued Rs. 1,12,000 (inclusive of CGST Rs. 6,000 and SGST Rs. 6,000) to ABC Ltd. under the forward charge on 12-11-2017 for which tax invoice was also issued on the same date. But ABC Ltd. did not make any payment towards such supply along with tax thereon to the supplier and availed input tax credit of CGST and SGST of Rs. 12,000 on 15-12-2017. Is ABC Ltd. eligible to avail input tax credit on such supply?

Discuss ITC implications if ABC Ltd. makes the payment of Rs. 1,12,000 to the supplier on 15-09-2018.

Ans. Yes, ABC Ltd. can avail input tax credit on receipt of taxable supply of goods. But it is required to pay the consideration along with tax within 180 days from the date of issue of invoice.

- i. If ABC Ltd. does not make payment within 180 days from the date of invoice: As per Rule 37 of CGST Rules, 2017, a registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to make payment to the supplier within 180 days from the date of issue of invoice shall furnish the details of such supply and the amount of input tax credit proportionate to such unpaid amount, availed of, in FORM GSTR-2 in succeeding month after expiry of 180 days (will be added to Output Tax Liability along with interest)

In this case since ABC Ltd. does not make any payment within 180 days from the date of invoice i.e. upto 11th May 2018, therefore amount equal to input tax credit availed by ABC Ltd. shall be added towards its output tax liability along with interest for the month of June, 2018 in which details of such supplies are required to be furnished.

Interest shall be calculated @18% [as given u/s 50(1) for the period starting from date of availing credit till the date when input tax credit added to the output tax liability is paid]

Particulars	Amount (Rs.)
Amount of Input tax	12,000
Date of availing credit (<i>Date of taking credit shall be construed as date of taking credit in electronic credit ledger</i>)	15-12-2017
Date of payment of ITC added to Output Tax Liability	15-06-2018
No. of Days for which interest needs to be paid	182
Interest @ 18% {12000*18%*182/365}	1,077

- ii. Re-credit of Input tax if payment made after 180 days: If ABC Ltd. makes payment on 15-09-2018 that is after 180 days from date of issue of invoice, then, it shall be entitled to avail the credit of input tax.

Q124. Determine the amount of ITC admissible to ABC Ltd. in respect of following items procured by them in the month of December 2017 (below amount is GST amount):-

1. Goods supplied for Captive consumption in a factory Rs. 10,000
2. Goods used in constructing an additional floor of office building Rs. 20,000
3. Packing material used in a factory Rs. 5,000
4. Goods destroyed due to natural calamities Rs. 20,000
5. Goods used for repairing the office building and cost of such repairs is debited to P & L Rs. 25,000
6. Paper for photocopying machine used in Administrative Office Rs. 1,000
7. Goods given as gifts Rs. 25,000
8. Inputs used for tests or quality control check Rs. 15,000
9. Goods purchased for being used in repairing the factory shed and same has been Capitalized in books Rs. 18,000
10. Cement used for making foundation and structural support to Plant & Machinery Rs. 14,000
11. Inputs used in trial runs Rs. 15,000

Ans. Statement showing ITC admissible to ABC Ltd. for the month of December 2017

Particulars	Amount (Rs.)
Goods supplied for Captive consumption in a factory (since, used in course of business, hence, ITC on same will be available)	10,000
Goods used in constructing an additional floor of office building {As per section 17 (5) (d), ITC shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant & machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Hence, ITC shall not be available}	NIL
Packing material used in a factory (since, used in course of business, hence, ITC on same will be available)	5,000
Goods destroyed due to natural calamities {As per section 17 (5) (h), ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Hence, no ITC shall be available in respect of goods destroyed due to natural calamities}	NIL
Goods used for repairing the office building and cost of such repairs is debited to P & L {As per explanation, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the immovable property. Goods used for revenue repairs are considered as an eligible input and credit shall be allowed on the same}	25,000
Paper for photocopying machine used in Administrative Office (since, used in course of business, hence, ITC on same will be available)	1,000
Goods given as gifts {As per section 17 (5) (h), ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Hence, no ITC shall be available in respect of goods given as gift}	NIL
Inputs used for tests or quality control check (since, used in course of business, hence, ITC on same will be available)	15,000

Goods purchased for being used in repairing the factory shed and same has been Capitalized in books {As per section 17 (5) (d), ITC shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant & machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Hence, ITC shall not be available}	NIL
Cement used for making foundation and structural support to Plant & Machinery {As per explanation to Section 17, "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for marking outward supply of goods or services or both and includes such foundation and structural supports. ITC is admissible in respect of goods or services or both received by a taxable person for construction of plant and machinery}	14,000
Inputs used in trial runs (since, used in course of business, hence, ITC on same will be available)	15,000
Total Input Tax credit available	85,000

Q125. ABC Ltd. is engaged in supply of works contract services for construction of immovable property. It gives a part of the construction work to a sub-contractor. The sub-contractor charges GST in his invoice to ABC Ltd. Whether ABC Ltd. can avail ITC on this?

Ans. As per section 17 (5) (c), ITC shall not be available in respect of works contract services when supplied for construction of an immovable property. However, credit is allowed where it is an input service for further supply of works contract service. In given case, the services supplied by the sub-contractor have been used by the ABC Ltd. for supply of works contract service. Hence, ABC Ltd. can avail the ITC of the GST charged on the input service provided by the sub-contractor.

Q126. ABC Ltd., a manufacturer, which is engaged in supply of taxable goods has purchased 10,000 kg of Product 'A' for Rs. 10,00,000 (exclusive of CGST @ 14% and SGST @ 14%) on which input tax credit has been taken. Due to changes in fashion process, the said product became obsolete and their value has been written off in the books of accounts. Explain Input tax credit treatment in above case.

Ans. As per Section 17 (5) (h) of the CGST Act, 2017, if the value of any goods is written off in the books of account, then no input tax credit shall be allowed in respect of the said input. Where input tax credit has been taken in respect of the said goods, the same has to be paid by recipient. Since in the given case, ABC Ltd. has availed input tax credit, thus it has to pay Rs. 1,40,000 (Rs. 10,00,000 @ 14%) towards CGST and Rs. 1,40,000 (Rs. 10,00,000 @ 14%) towards SGST liability.

Q127. ABC Ltd. paying tax under composition scheme becomes liable to pay tax under regular scheme from 01/04/2018. Can it avail Input tax credit and if so determine the amount of ITC available? Break-up of credit available with ABC Ltd. as on 31/03/2018:

Particulars	CGST	SGST
Inputs lying in stock (Invoice dated 11/03/2018)	4,500	4,500
Capital goods procured on 25/09/2017 Invoice dated 27/09/2017	6,000	6,000
Inputs lying in semi-finished goods in stock (Invoice dated 21/12/2017)	1,500	1,500

Ans. As per Section 18(1)(c), where any registered person ceases to pay tax under Section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he become liable to pay tax under Section 9.

Therefore, in given case, ABC Ltd. shall be entitled from 01/04/2018 to avail credit available as on 31/03/2018. The credit of capital goods is to be claimed after reducing the tax paid on such capital goods by 5% points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person. (Rule 40 of CGST Rules)

Statement showing ITC available to ABC Ltd. In respect of inputs

Particulars	ITC (CGST + SGST)	Eligible Credit
Inputs lying in stock (4500+4500)	9,000	9,000
Inputs lying in semi-finished goods in stock (Invoice dated 21/12/2017) (1500+1500)	3,000	3,000
Total Input tax credit available	12,000	12,000

Statement showing ITC available to ABC Ltd. In respect of capital goods

Particulars	Amount in Rs.
Date of invoice of capital goods	27/09/2017
Date from which ABC Ltd. are liable to pay tax under Section 9	01/04/2018
No. of quarters from date of invoice	3
CGST and SGST paid on capital goods procured on 27/09/2017	12,000
ITC to be reduced by Rs.. $12,000 \times 5\% \times 3$ quarters	1,800
Credit (CGST and SGST) available on capital goods	10,200

Note: As per Section 2(92), “quarter” shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.

Q128. ABC Ltd. a registered dealer engaged in supplying exempted goods to its customers. On 12/09/2018, exemption notification was rescinded and goods were liable for tax. ABC Ltd. has to make e-payment of tax on the due date i.e., on 20/10/2018. Determine the eligible credit for the month of September, 2018 if the following information is provided:

Particulars	Value (exclusive of CGST/SGST /IGST) (Rs.)	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	IGST @ 5% (Rs.)
Value of Inputs lying in stock as on 11/09/2018.	1,25,000			6,250
Value of inputs contained in semi-finished goods lying in stock as on 11/09/2018 but only inputs worth 28,000 in semi-finished goods were procured after 11/09/2017	87,000	7,830	7,830	
Inputs received on 30/04/2018 lying in finished goods in stock on 11/09/2018	1,15,000	10,350	10,350	
Capital goods procured in 10/10/2017 which is exclusively used in supplying exempted goods	6,55,000			32,750

Ans. As per Section 18(1)(d), where an exempt supply of goods or services or both by a registered person become a taxable supply, such person 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 relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

As per CGST Rules, 2017, the input tax credit on capital goods, shall be claimed after reducing the tax paid on such capital goods by 5% points per quarter of a

year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

Computation of Input tax credit relating to CGST/SGST/IGST available to ABC Ltd. in respect of inputs and capital goods will be as follows:

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)	Total Eligible Credit (Rs.)
ITC on the value of inputs lying in stock. (In absence of any information, it is assumed that all stocks are purchased within one year and hence are eligible)	--	--	6,250	6,250
Input tax credit on the value of inputs contained in semi-finished goods [Working Notes 1]	2,520	2,520	--	5,040
Input tax credit on value of inputs lying in stock of finished goods stock [Inputs received on 30/04/2018 lying in finished goods in stock on 11/09/2018 as all inputs were acquired within 1 year prior to the effective date on which the goods become taxable, therefore, entire ITC would be allowed]	10,350	10,350	--	20,700
Capital goods [Working Notes 2]	--	--	26,200	26,200
Total Input tax credit available	12,870	12,870	32,450	58,190

Working Notes:

- ITC on the value of inputs contained in semi-finished goods – Out of the total stock of Rs.. 87,000, inputs totaling to Rs.. 59,000 are ineligible as period of 1 year has elapsed from the effective date of purchase. ITC on inputs contained in stock of Rs.28,000 would be eligible. [Eligible Credit = Rs.. 7,830 x Rs.. 28,000 ÷ Rs.. 87,000 each in respect of CGST and SGST]
- Credit available in respect of capital goods:

Particulars	Rs.
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Date of invoice	10/10/2017
Date from which the goods become taxable	17/09/2018
No. of quarters or part thereof from date of invoice	4
Percentage points to be reduced (5% per quarter)	20%
IGST paid on the capital goods used exclusively in relation to goods exempted upto 11/09/2018 ITC to be reduced by 20%	32,750
	6,550
Amount of Input tax credit available in respect of capital goods	26,200

Q129. ABC Ltd. a supplier of goods has purchased capital goods on 01/04/2018 for Rs. 11,20,000 (inclusive of CGST @ 6% and SGST @ 6%). After taking it for business use, the said capital goods were supplied for Rs. 9,50,000 on 01/12/2018. Explain Input tax credit treatment in this case.

Ans. As per Section 18(6) of the CGST Act read with Rule 40(2) of CGST Rule, 2017, in case of supply of capital goods, on which input tax credit has been taken, the registered person shall pay an amount – Equal to the input tax credit taken on the said capital goods reduced by an amount calculated @ 5% for every quarter or part thereof from the date of issue of invoice for such goods; or

The tax on the transaction value of such capital goods or plant and machinery determined under Section 15, whichever is higher.

Particulars	Rs
Date of Invoice of purchase of capital goods	01/04/2018
Date of Supply of capital goods after taking into use	01/12/2018
No. of Quarters from the date of issue of invoice for such goods	3
CGST and SGST paid on purchase of Capital Goods [Rs. 11,20,000 x 12 ÷ 112] Reduced by Rs. 1,20,000 x 5% × 3 quarters	1,20,000 (18,000)
Amount of CGST and SGST (A)	1,02,000
Transaction Value on supply of Capital Goods u/s 15	9,50,000
CGST and SGST payable on supply of Capital Goods @ 12% (B)	1,14,000
Amount to be payable (higher of A or B)	1,14,000

Q130. What would be your answer if capital goods being Jig are removed as scrap at a transaction value of Rs.. 1,25,000 on 01/12/2018?

Ans. As per proviso to Section 18(6), where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, there shall be no requirement for reversal of Input tax credit, taxable person may tax on the transaction value determined under Section 15.

In the given case, since, jig are cleared as scrap, the manufacturer shall pay an amount equal to the tax leviable on transaction value i.e. CGST Rs. 1,25,000 x 6% = Rs. 7,500 and SGST Rs. 1,25,000 x 6% = Rs. 7,500.

Q131. A garment factory received a government order for making uniforms for a defense personnel. This supply is exempt from tax under a special notification. The fabrics is separately procured for the supply, but thread, buttons and lining material for the collars are the once which are used for other taxable products of the factory.

The turnover of the other garments of the factory and exempted uniforms in July 2018 is Rs. 8 crore and Rs. 2 crore respectively, the ITC on thread, button and lining material procured in July 2018 is Rs. 5,000; Rs. 25,000 and Rs. 15,000 respectively. Calculate the eligible ITC on thread and lining material.

Ans. Thread, buttons and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be added to the output tax liability in items of rule 43 of the CGST rules, 2017.

Credit attributable to exempt supplies = Common credit x (Exempt turnover / Total turnover)
Common credit = Rs. 5,000 + Rs. 25,000 + Rs. 15,000 = Rs. 45,000

Exempt turnover = Rs. 2 Crore

Total turnover = Rs. 10 Crore [Rs. 2 Crore + Rs. 8 Crore]

Credit attributable to exempt supply = (Rs. 2 crore / 10 Crore) x Rs. 45,000 = Rs. 9,000

Ineligible credit of Rs. 9,000 will be reversed/ added to the output tax liability for the month of July. Credit of Rs. 36,000 will be eligible credit for the month of July.

Q132. Total Credit Available to ISD is Rs. 20,00,000/- & the credit distributed to all the units is Rs. 24,00,000/- (i.e. Vijaywada Rs. 10,00,000, unit Jaipur Rs. 6,00,000 & unit Ahmedabad Rs. 8,00,000). What will be the consequences?

Ans. The excess credit of Rs. 4,00,000 (Rs. 24,00,000- Rs. 20,00,000) distributed would be recovered from the recipient along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

Q133. Total Credit Available to ISD is Rs. 15,00,000/- & the credit should have been distributed equal to all the units as all units had equal turnover, however credit distributed in violation of Section 21, as under:

Vijaywada Rs. 7,00,000, Jaipur Rs. 6,00,000, Ahmedabad Rs. 2,00,000. What will be the consequences?

Ans. The excess credit of Rs. 2,00,000 (Rs. 7,00,000- Rs. 5,00,000) shall be recovered from Vijaywada and Rs. 1,00,000 (Rs. 600,000 – Rs. 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

Q134. What is input tax?

Ans. Input tax means the central tax (CGST), State tax (SGST), Integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.

Q135. What are the conditions necessary for obtaining ITC?

Ans. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:

- a. he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
- b. he has received the goods or services or both;
- c. the supplier has actually paid the tax charged in respect of the supply to the Government; and
- d. he has furnished the return under section 39.

Q136. Can a person take ITC without payment of consideration for the supply along with tax to the supplier?

Ans. Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice.

This condition is not applicable where tax is payable on reverse charge basis.

Q137. What is the maximum time limit to claim the Input tax credit?

Ans. In terms of Section 16(4) of the CGST Act, a registered person is not entitled to claim input tax credit in respect of any supply of goods or services after the earlier of following two events:

- (a) Due Date of filing of the return under Section 39 of the Act for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, i.e. 20th October;
- (b) Furnishing of the annual return. In terms of Section 44, the due date of filing annual return is 31st December following the end of the financial year.

However, in cases of credit in special circumstances like new registration, voluntary registration, etc. the credit will not be available after the expiry of one year from the date of issue of tax invoice.

Q138. What is the ITC entitlement of a newly registered person?

Ans. A person applying for registration can take input tax credit of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

Q139. What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

Ans. In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.

However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

Q140. A flying school imports an aircraft for use in its training activity, and takes ITC of the IGST paid on the import. The departmental audit raises an objection that aircrafts fall within the definition of “conveyance” in section 2(34) of the Act and that ITC is not allowed on conveyances. Offer your comments.

Ans. Under section 17(5)(aa) of the CGST Act, ITC is allowed on aircraft if they are used to make the taxable supply of imparting training on flying an aircraft. Therefore, the credit is correctly taken.

Q141. A taxable person is in the business of information technology. He buys a motor vehicle for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?

Ans. No. As per section 17(5)(a), ITC on motor vehicles can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving/flying/navigating motor vehicles or is in the business of supply of motor vehicles.

Q142. A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.

Ans. Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.

Q143. A summary assessment order has been issued against Mr. Kanhaiya Mittal, a taxable person under GST. Mr. Kanhaiya Mittal does not wish to take recourse to appellate machinery against the assessment order.

He has approached you for seeking advice on whether there is any other recourse available to him against the said summary assessment?

Ans. Yes, Mr. Kanhaiya Mittal has other recourse available to him against summary assessment order other than appellate remedy. Mr. Kanhaiya Mittal against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within 30 days of the date of receipt of the order vide section 64 of CGST Act. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Q144. Examine whether GST is payable in the following independent cases:-

- (i) Amar Jyoti Charitable trust, registered under section 10(23C)(v) of the Income-tax Act manages a temple in Shahdara, Vijaywada. It has given on rent a community hall, located within temple premises, to public for celebration of new year evening. Rent charged is Rs. 9,500.**
- (ii) Speed post services by Department of Post to Union Territory of Lakshadweep.**
- (iii) XY Ltd. has given on hire 7 trucks to Jaggi Transporters of Vijaywada (a goods transport agency) for transporting goods in Central and West Vijaywada. The hiring charges for the trucks are Rs. 6,200 per truck per day.**

Ans.

- i. Renting of community hall by Amar Jyoti charitable trust is exempt from GST, as rent is less than Rs. 10,000 per day. The Exemption Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017 has exempted the said service wholly from GST.

The said notification provides exemption to services by a person inter alia by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a trust or an institution under section 10(23C)(v) of the Income-tax Act . However, this exemption does not apply where renting charges of premises, community halls, kalyanmandapam or open area are ` 10,000 or more per day.

- ii. GST is not payable in case of speed post services by Department of Post to Union territory of Lakshadweep. The Exemption Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017 has exempted the said service wholly from GST.

Exemption Notification inter alia provides exemption to services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to the Central Government, State Government, Union territory. Therefore GST is payable, if such service is provided to a person other than Central Government/State Government/Union Territory.

- iii. GST is not payable in case of hiring of trucks to Jaggi Transporters. The Exemption Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) 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.

Q145. Trend Footwear, a registered supplier in Jaipur dealing in local supply of loafers and wedges, wants to opt for composition scheme with effect from 01 April, 20XX. Its aggregate turnover in the preceding financial year is Rs. 78 lakh. Besides dealing in supply of loafers and wedges, he also has a rental income of Rs. 1,35,000 per month from the basement of a commercial building located in Jaipur.

You are required to discuss, whether Trend Footwear can opt for composition scheme?

Ans. No, Trend Footwear cannot opt for composition scheme. Section 10 of CGST Act, 2017 inter alia provides that registered person, whose aggregate turnover in the preceding financial year does not exceed one crore rupees, can opt to pay tax under composition scheme in the current year.

However, section 10(2) inter alia provides that registered person is eligible to opt for composition scheme if he is not engaged in the supply of services other than restaurant services. In the present case, Trend Footwear is engaged in the supply of services other than restaurant services, as Trend Footwear has rental income from the basement of a commercial building, so it cannot opt for composition scheme irrespective of its aggregate turnover in the preceding financial year.

Q146. ABC Consultancy, registered in Hyderabad, supplies technical consultancy services to its clients. It has been providing technical services to XY Ltd., Hyderabad since past two years. Consideration is settled by XY Ltd. assignment wise. XY Ltd. paid Rs. 45 lakh to ABC Consultancy on 10th January, 20XX on ABC consultancy agreeing to not provide similar technical services to any other business entity in India or abroad for a period of 8 years. ABC Consultancy is of the view that Rs. 45 lakh is not chargeable to GST.

You are required to examine whether the view taken by ABC Consultancy is valid in law. Calculate GST liability of ABC Consultancy, if any. The technical services provided by ABC consultancy is otherwise chargeable to GST at the rate of 18%. It may be noted that XY Ltd. is not ready to pay any further amount to ABC Consultancy in addition to the amount already agreed.

Ans. The view taken by ABC Consultancy is not valid in law. The scope of supply is defined by section 7(1) of CGST Act, 2017. It includes deemed supply given under Schedule II. The paragraph 5(e) of Schedule II provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

Thus, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST. Consideration received for non-compete agreement is deemed as consideration for supply of services. Consideration of Rs. 45 lakh received on the promise of ABC consultancy of not providing similar services to any other person, is consideration for supply which is chargeable to GST.

Since GST is not separately collected, it will be assumed that it is included in Rs. 45 lakh. Rule 35 of CGST Rules, 2017 provides that where the value of supply is inclusive of GST, the tax amount is determined in the following manner:

Tax amount = (Value inclusive of taxes x GST rate in %) [IGST or CGST, SGST/UTGST] / (100 + sum of GST rates in %)

Consequently, value of taxable supply will be Rs. 38,13,559 (i.e., Rs. 45,00,000 x 100/118). GST liability on Rs. 38,13,559 will be calculated as follows-

Particulars	Amount
Taxable value of supply	38,13,559
Add: CGST @ 9% of Rs. 38,13,559	3,43,220
SGST @ 9% of Rs. 38,13,559	3,43,220
Total GST liability	6,86,440

Q147. Singhal Brothers, registered in Uttarakhand has supplied 30 tons of a chemical @ Rs. 50,000 per ton (excluding taxes) to P of Uttarakhand on 8th September, 20XX. The invoice for the supply has also been issued on the same date. Further, following additional amounts were also charged from P:-

Particulars	Amount
Freight	1,80,000
Packing Charges	1,10,000
Weighing Charges	20,000
Cost of instrument specially purchased by Singhal Brothers to manufacture the chemical	3,10,000

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

P is required to make payment within 15 days of supply in terms of the contract. However, P delayed the payment of consideration and made payment in November, 20XX thus paid Rs. 15,000 as interest. You are required to calculate the GST liability in this case and due date of deposit. Assume the rate of GST to be 18%.

Note: Singhal Brothers and P are not related and price is the sole consideration for the supply

Ans.

Computation of GST liability of Singhal Brothers

Particulars	Amount
Price of chemicals (Rs. 50,000 x 30 tons) [Note-1]	15,00,000
Freight [Note-2]	1,80,000
Packing charges [Note-3]	1,10,000
Weighing charges [Note-3]	20,000
Cost of special instrument [Note-4]	3,10,000
Inspection charges [Note-5]	12,000
Government subsidy [Note-6]	-
Interest for late payment [Note 7] (Rs. 15,000 x 100/118)	<u>12,712</u>
Value of taxable supply	21,44,712
Tax liability for the month of September 20XX	
Value of taxable supply (Rs. 21,44,712- Rs. 12,712) [Note-8]	21,32,000
CGST @ 9%	1,91,880
SGST @ 9%	1,91,880

Tax liability for the month of November 20XX	
Interest for late consideration [Note-9]	12,712
CGST payable @ 9%	1,144
SGST payable @ 9%	1,144

Due date of Deposit of GST

Particulars	Time of Supply	Due date of deposit [Note-11]
GST liability of Rs. 3,83,760 for the taxable supply made by Singhal Brothers	September 8, 20XX	October 20, 20XX
Interest amounting to Rs. 2,288 [Note-9]	November, 20XX	Dec 20, 20XX

Notes:

- i. As per section 15(1) of the CGST Act, 2017, the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- ii. The given supply is a composite supply involving supply of goods (chemical) and services (freight) where the principal supply is the supply of goods.
As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (chemical) has been considered.
- iii. All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- iv. Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- v. Any amount that the supplier is liable to pay in relation to supply but incurred by the recipient of supply and not included in the price actually paid for the goods is includible in the value of supply in terms of section 15(2)(b) of CGST Act, 2017.
- vi. Subsidies not directly linked to the price and provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017.
- vii. Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d) of the CGST Act, 2017.
The interest has to be considered as cum tax value and tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017.
- viii. The tax liability for the month of September, 20XX will not include the tax payable on the amount of interest as the tax liability for the delayed payment of interest arises on the date of receipt of interest in terms of section 12(6) of CGST Act, 2017.
- ix. As per section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received on account of delayed payment of consideration is the date of receipt of interest.
- x. As per section 39(1) of CGST Act, 2017 every person registered under regular scheme of payment of tax has to furnish the prescribed return on or before 20th of the succeeding month. Further, section 39(7) provides that every regular registered person is liable to pay tax due to the Government by the last date on which he is required to furnish

such return. Thus, GST is liable to be paid on or before 20th of the succeeding month.

Q148. Compute the GST liability of Mr. Mayank, an air travel agent, for the month ended December 31, 20XX using the following details:-

Particulars	Amount
Basic air fare collected for domestic booking of tickets Basic	50,00,000
Air fare collected for international booking of tickets	80,00,000
Commission received from the airlines on the sale of domestic and international tickets	5,00,000

Ans. As per rule 32 of the CGST Rules, 2017, the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of 5% of the basic fare in the case of domestic bookings, and at the rate of 10% of the basic fare in the case of international bookings of passage for travel by air. Thus, GST liability would be computed as under:

Particulars	Rs.
5% of the basic air fare collected for domestic booking of tickets [Rs. 50,00,000 × 5%]	2,50,000
10% of the basic air fare collected for international booking of tickets [Rs. 80,00,000 × 10%]	<u>8,00,000</u>
GST payable on	10,50,000

Q149. Siddhi Ltd. exported some goods to Samson Inc. of USA. It received US \$ 9,000 as consideration for the same and sold the foreign currency @ Rs. 61 per US dollar. Compute the value of supply of money changing service under GST law and rules made thereunder in the following cases:-

- RBI reference rate for US dollar at that time is Rs. 62 per US dollar.
- RBI reference rate for US dollars is not available.

What would be the value of supply if US \$ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US \$ is Rs. 63 per US dollar and for UK £ is Rs. 101 per UK Pound.

Ans. (a) Rule 32 of CGST Rules, 2017 inter alia provides that for a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Hence, in the given case, value of taxable service would be as follows:- RBI reference rate for \$ – Selling rate for \$) × Total units of US \$

$$= \text{Rs. } (62-61) \times 9,000$$

$$= \text{Rs. } 9,000$$

(b) If the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

Hence, in the given case, value of taxable service would be as follows:- 1% of

$$\text{Rs. } (61 \times 9,000)$$

$$= \text{Rs. } 5,490$$

In case neither of the currencies exchanged is Indian Rupee:

The value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

Hence, in the given case, value of taxable service would be 1% of the lower of the following:-

- a) US dollar converted into Indian rupees = \$ 9,000 × Rs. 63 = Rs. 5,67,000
 - b) UK pound converted into Indian rupees = £ 4,500 × Rs. 101 = Rs. 4,54,500
- Value of taxable service = 1% of Rs. 4,54,500 = Rs. 4,545

Q150. A manufacturer of machinery supplied a special machine to LM Furnishers. Following details are provided in relation to amounts charged:

S.No.	Particulars	Rs.
(i)	Price of machinery excluding taxes (before cash discount)	6,00,000
(ii)	Transit insurance	11,000
(iii)	Packing charges	9,000
(iv)	Extra charges for designing the machine	20,000
(v)	Freight	12,000

Charges mentioned in (ii) to (v) are not included in (i) above. Other information furnished is -

- a. Cash discount @ 2% on price of machinery has been allowed to the customer at the time of supply and also recorded in invoice.
- b. GST rate – 18%.

Calculate value of supply of the special machine.

Ans. Computation of value of special machine

Particulars	
Price of machinery	6,00,000
Add: Transit insurance [Note 1]	11,000
Packing charges [Note 2]	9,000
Extra design charges [Note 3]	20,000
Freight [Note 1]	<u>12,000</u>
Total	6,52,000
Less: 2% cash discount on price of machinery [Rs. 6,00,000 x 2%] [Note 4]	<u>12,000</u>
Value of taxable supply	6,40,000

Notes:

1. The given supply is a composite supply involving supply of goods (special machine) and services (transit insurance and freight) where the principal supply is the supply of goods.
As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (special machine) has been considered
2. All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
3. Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017. Thus, extra designing charges are to be included in the value of supply.
4. Cash discount was given at the time of supply and also recorded in invoice, so the same is not to be included while computing value of supply in terms of section 15(3)(a) of CGST Act, 2017

Q151. When can, the proper officer authorize arrest of any person under section 69?

Ans. The Commissioner of CGST, 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 (b) or (c) or (d) of section 132(1) which is punishable under clause (i) or (ii) of section 132(1) or section 132(2) of the Act. 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 ` 2 Crores (imprisonment for a term up to 1 year with fine) or Rs. 5 Crores (imprisonment for a term up to 5 years with fine).

Q152. A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.

The turnover of the other products of the factory and exempted uniforms in July is Rs. 4 crore and Rs. 1 crore respectively, the ITC on thread and lining material procured in July is Rs. 5000 and Rs. 15000 respectively.

Calculate the eligible ITC on thread and lining material.

Ans. Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be added to the output tax liability in terms of rule 42 of the CGST Rules, 2017.

Credit attributable to exempt supplies = Common credit x (Exempt turnover / Total turnover) Common credit = Rs.15,000 + Rs.5,000 = Rs.20,000

Exempt turnover = Rs.1 crore

Total turnover = Rs.5 crore (Rs.1 crore + Rs.4 crore)

Credit attributable to exempt supplies = (Rs. 1 crore / Rs.5 crore) x Rs.20,000 = Rs.4,000.

Ineligible credit of Rs. 4,000 will be added to the output tax liability for the month of July. Credit of Rs. 16,000 will be eligible credit for the month of July.

Q153. Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

Ans. Mr. A is eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice [Section 18(1)(c)].

Q154. Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie Engineers. As per agreement, the mould was to remain with the job worker as long as work was being sent to him.

After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineers. GST was demanded

from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker.

How should they respond to this?

Ans. Genie Engineers should reply on the following lines:

Under section 19(6) of CGST Act, the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.

The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years from sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)].

However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.

Hence, Genie Engineers have correctly taken the ITC on moulds.

Q155. Ceramity Ltd. has following units:

- A. Factory in Hassan, Karnataka; closed from 2017-18 onwards, no turnover.**
- B. Factory in Tumkur, Karnataka; turnover of Rs. 27 crores in 2017-18;**
- C. Service centre in Hyderabad, Telangana; turnover of Rs. 1 crore in 2017-18;**
- D. D: Service centre in Chennai, Tamil Nadu; turnover of Rs. 2 crores in 2017-18;**

Ceramity Ltd.'s corporate office functions as ISD. It has to distribute ITC of Rs. 9 lakh for December, 2018. Of this, an invoice involving tax of Rs. 3 lakh pertains to technical consultancy for Tumkur unit.

What should be the distribution of the credit?

Ans. As per rule 39(d) of CGST Rules relating to ITC, -

- Rs. 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.
- Of the remaining Rs. 6 lakh, Hassan unit will not be entitled to any credit as ITC is distributed to only those recipients which supply goods and /or services.
- Rs. 6 lakh have to be distributed among Tumkur unit and the service centres in Hyderabad and Chennai in proportion of their turnover in the

previous FY, that is, in 2017-18.

- Tumkur unit will get $(27 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 5.4 \text{ lakh}$;
- Hyderabad service centre will get $(1 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 20,000$; and
- Chennai service centre will get $(2 \text{ crore} / 30 \text{ crore}) \times 6 \text{ Lakh} = \text{Rs. } 40,000$

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Q156. If a person is registered under earlier law, whether he needs to be registered under GST law compulsorily?

Ans. Yes. As per section 22 (2) of the CGST Act, every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.

Q157. What is the time limit for taking registration under GST Law?

Ans. Every Person who is liable to be registered under Section 22 or Section 24 shall apply within 30 days from the date on which he becomes liable to registration in such manner and subject to such conditions as may be prescribed. Further, a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.

Furthermore, every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Q158. Can the taxable supply made by the job-worker on behalf of his principal be considered for computing his aggregate turnover?

Ans. As per the second explanation to the section 22, value of taxable supply (completion of job work) made by the registered job-worker on behalf of his principal shall not be added to the aggregate turnover of the registered Job worker.

Q159. Do traders having turnover less than Rs. 20 Lakhs need to get registered under GST? If not, how can they purchase primary goods from other states without having GST Registration Number?

Ans. Traders having turnover of less than Rs 20 lakhs can buy from other States also without registration except in case of those goods which are subject to reverse charge.

Q160. When a person engaged in the provision of services having registration in the Maharashtra goes to Kolkata to provide services to its client and stays therefore a period of 3 months and also take a residence in that State is required to take separate registration in that State.

Ans. No, mere residence is not a business establishment, and therefore he need not take a registration in the State of West Bengal.

Q161. State which of the following suppliers are liable to be registered:

- a. **Commission Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed Rs. 20 lakhs during the financial year.**
- b. **An agriculturist who is only engaged in supply of produce out of cultivation of land.**

Ans.

- a. Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds Rs. 20 lakhs in a State/UT [Rs. 10 Lakhs in Special Category States except J & K] in a financial year. However, as per section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed Rs. 20 lakhs during the financial year.
- b. As per Section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration even when turnover from such activities goes to any limit.

Q162. Mr. A is a salaried employee (salary income being Rs. 1 crore). Besides, he owns a residential property which is let out for residential purposes for annual rent being Rs. 30 lakh.

Ans. In this case, aggregate turnover is Rs. 30 lakh, rent received from residential property renting. Since service of renting of residential property for residential purpose is exempt supply, Mr. A shall be exempt from registration requirement as Sec 23 of CGST Act provides for exemption from registration where a person is exclusively engaged in making exempt supplies.

Since Mr. A is not making supply of any taxable services, he is not liable for registration.

Q163. Pure Oils, Vijaywada has started the supply of machine oils and high speed diesel in the month of April, 20XX. The following details have been furnished by it for the said month: -

Particulars	Amount*
Supply of machine oils in Vijaywada	2,00,000

Supply of high speed diesel in Vijaywada	4,00,000
Supply made through Fortis Lubricants - an agent of Pure Oils in Vijaywada	3,75,000
Supply made by Pure Oils from its branch located in Punjab	1,80,000

***excluding GST**

Determine whether Pure Oils is liable for registration.

Will your answer change, if Pure Oils has a branch in Himachal Pradesh from where he supplies machine oils amounting to Rs. 2,50,000?

Ans. Computation of Aggregate turnover

Particulars	Amount
Supply of machine oils in Vijaywada {Supply of machine oil in Vijaywada is intra-state supply of goods which is taxable under GST law. It shall be includible in 'aggregate turnover'}	2,00,000
Supply of high speed diesel in Vijaywada {Supply of HSD in Vijaywada is intra-state supply of goods which is non-taxable under GST law. Though non-taxable, it shall be includible in 'aggregate turnover'}	4,00,000
Supply made through Fortis Lubricants - an agent of Pure Oils in Vijaywada {Transfer of goods to agent for further supply (sale) is also treated as 'supply' though such transfer does not include any consideration. Sec 7(1)(c) read with Schedule I (Entry 3) covers transfer of goods to agent. Further, since goods have been transferred to Agent in Vijaywada, such transfer is an intra-state supply of goods which is taxable under GST. It shall be includible in 'aggregate turnover'}	3,75,000
Supply made by Pure Oils from its branch located in Punjab {Supply is made from branch office in Punjab. Under GST law, such branch office is treated as establishment of a different person. Thus, Head Office (Vijaywada) and Branch Office (Punjab) are treated as 'deemed distinct persons (establishment of different persons)' under GST law. In absence of specific information, it is presumed that Punjab branch is also making 'intra-state' supply. Since ATO is computed on all India basis (establishments operating with same PAN), it shall be includible in 'aggregate turnover'}	1,80,000
Aggregate Turnover	11,55,000

Registration Requirement of Pure Oils, Vijaywada

All the supplies made by Pure Oils are intra-state supplies and thus, his liability for registration shall be governed by Sec 22 of the CGST Act which provides that every supplier is liable to be registered in the State/UT from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakh (Rs 10 lakhs in case he is making supplies from special category states).

Since the aggregate turnover is not exceeding Rs. 20 lakh, Pure Oils is not liable to be registered.

In case where Pure Oils has a branch in Himachal Pradesh from where he supplies machine oils amounting to Rs. 2,50,000, then aggregate turnover in that case will be 14,05,000 (11,55,000 + 2,50,000). Further, in this situation, the applicable threshold for registration will be Rs. 10 lakh as Himachal Pradesh is one of the specified Special Category States. Thus, in such situation Pure Oils, Vijaywada shall be liable to be registered.

Q164. Mr. A a dealer (situated in Hyderabad) dealing with Intra State supply of goods and services has place of business in India furnished the following information in the financial year 20XX-X1:

1. Sale of taxable goods by Head Office located in Chennai for Rs. 2,00,000
2. Supply of taxable services by Branch office at Vijaywada for Rs. 1,00,000
3. Supply of goods exempted from GST Rs. 10,000
4. Export of goods for Rs. 2,00,000

Ans. Computation of Aggregate turnover

Particulars	Amount
Sale of taxable goods by Head Office located in Chennai	2,00,000
Supply of taxable services by Branch office at Vijaywada	1,00,000
Supply of goods exempted from GST	10,000
Export of goods and services	2,00,000
Aggregate Turnover	5,10,000

Though aggregate turnover is not exceeding Rs. 20 lakhs, but since he is engaged in exports which are inter-state supplies, his registration falls under section 24 which provides for compulsory registration (i.e., no threshold limit of 20 Lakhs).

Note:

1. Export (inter-state supplies), Export supplies are zero-rated in terms of Sec 16 of IGST Act.
2. For availing benefit of zero-rating provided by Sec 16, registration is mandatory. [Sec 16(3) of IGST Act gives benefit to 'registered person']

Q165. Mr. A has aggregate turnover of Rs 15 lakhs in a FY from the State of Maharashtra, through its sole proprietorship firm. He has a property located in Chennai, which is currently in dispute and has engaged lawyer for representing his case in dispute. Will Mr. A be required to register himself U/s 24 of the CGST Act, considering persons required to pay under RCM?

Ans. Mr. A is a business entity making intra-state supplies in State of Maharashtra only. It is unregistered, as his aggregate turnover is not exceeding Rs 20 lakhs in a FY. Now, it has received services legal services which attracts reverse charge and thus, making recipient liable to pay GST. Presuming that legal services have been sought in relation to business, such service is exempt from payment of GST as Mr. A is a business entity with aggregate turnover not exceeding Rs 20 lakhs. Such service being exempt, the recipient, Mr. A, is actually not required to pay GST. Thus, he is not required to take compulsory registration U/s 24 of CGST Act

Q166. Determine the effective date of registration in following cases:

- (a) The aggregate turnover of Dhampur Industries of Vijaywada has exceeded Rs. 20 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.**
- (b) Mehta Teleservices is an internet service provider in Lucknow. Its aggregate turnover exceeds Rs. 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.**

Ans.

- (a)** Every supplier becomes liable to registration if his turnover exceeds Rs. 20 lakh [in a State/UT other than Special Category States] in a financial year [Section 22]. Since in the given case, the turnover of Dhampur Industries exceeded Rs. 20 lakh on 1st September, it becomes liable to registration on said date.

Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10 of the Chapter III - Registration of CGST Rules, 2017]. Therefore, the effective date of registration is 1st September.

- (b)** Since in the given case, the turnover of Mehta Teleservices exceeds Rs. 20 lakh on 25th October, it becomes liable to registration on said date.

Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration.

Therefore, the effective date of registration is 5th December.

Q167. State the time-period within which registration needs to be obtained in each of the following independent cases:

(a) Casual taxable person

(b) Person making inter-State taxable supply

Ans. Section 25(1) of the CGST Act stipulates the time-period within which registration needs to be obtained in various cases. It provides the following time-limits:

In case of	Registration needs to be obtained
A person who is liable to be registered under section 22 or section 24	Within 30 days from the date on which he becomes liable to registration
A casual taxable person or a non-resident taxable person	At least 5 days prior to the commencement of Business

In view of the aforesaid provisions:

- A casual taxable person must obtain registration at least 5 days prior to the commencement of its business.
- As per section 24 of the CGST Act, person making inter-State taxable supply of goods is liable to get compulsorily registered. Therefore, such person must obtain registration within 30 days from the date on which he becomes liable to registration.

The persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 lakh in a financial year have been exempted from obtaining compulsory registration.

However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of Rs. 10 lakh in case of "special category States" (limit Rs. 20 lakh).

Q168. State which of the following suppliers are liable to be registered:

- Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed Rs. 20 lakh during the financial year.**
- An agriculturist who is only engaged in supply of produce out of cultivation of land.**

Ans.

- Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds Rs. 20 lakh in a State/UT [Rs. 10 lakh in Special Category States] in a financial year. However, as per section 24, a person

supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed Rs. 20 lakh during the financial year.

- b) As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.

Q169. Can the Department, through the proper officer, suo-moto proceed to register of a person?

Ans. Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.

Q170. What is the validity period of the registration certificate issued to a casual taxable person and non- resident taxable person?

Ans. In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier.

However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Q171. I am constructing a building for my client. The client is required to pay me on completion of plinth, 1st floor and 2nd floor. When should the invoice be raised?

Ans. The above instance is a case of continuous supply of services. Here, since the payment is linked to completion of an event (i.e., milestones set in the contract), an invoice should be raised on or before the due date of completion of event as per section 31(5)(c) of the CGST Act, 2017. Therefore, an invoice be raised on or before completion of the 1st floor and the second time on or before the completion of 2nd floor.

Q172. I had a contract for supplying manpower for 28 days for Rs. 28,000/-. However, after 10 days, the service has stopped. Should I raise an invoice?

Ans. Yes. Where a supply of service ceases before its completion, an invoice has to be issued at the time

the supply ceases, i.e., on the 10th day. The invoice shall be issued to the extent of the service provided before its cessation. (Section 31(6) of the CGST Act, 2017).

Q173. I became liable to pay tax on 1st April, 2017. I have applied for registration on 15th April, 2017 which is within the 30 days' window given to me. My registration is granted on 29th April, 2017. What document can I issue to collect tax from 1st April to 28th April, 2017?

Ans. Till the grant of registration on i.e., 29th April, 2017 tax cannot be collected on the supplies made. However, even though the registration is granted on 29th April, 2017 the effective date of registration will be 1st April, as registration is applied for within the permissible period.

Section 31(3)(a) provides for issue of 'revised invoices' against the bills raised on a regular basis (without collection of tax) from 1st April to 28th April, within a period of 1 month from the date of grant of registration certificate, i.e., within 28th May, 2017. Applicable taxes can be collected in the revised invoices issued.

Q174. ABC Ltd., a registered person provides the services of repairs and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with XYZ Ltd. for its AC and washing machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on service is rendered. During the year, it provided the services on April 1, July 1, October 1 and January 1 in accordance with the terms of contract. When should ABC Ltd. issue the invoice for the services rendered?

Ans. Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by ABC Ltd. on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, ABC Ltd. should issue quarterly invoices on or before April 1, July 1, October 1 and January 1.

Q175. ABC Ltd. has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.

Ans. A registered person paying tax under the provisions of section 10 (composition levy) shall issue, instead of a tax invoice, a bill of supply containing such particulars in such manner as may be prescribed {section 31 (3) (c) read with CGST Rules, 2017}. Therefore, in the given case, ABC Ltd. cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

Q176. ABC Ltd., located in Pune (Maharashtra), received the advance to supply the training. As per the agreement, the supplier may have to impart the training to Jaipur branch or Hyderabad branch (both are registered place of recipient) as per the need. What should be the treatment?

Ans. At the time of receiving the advance, supplier is known that where he has impart the training. Nevertheless, he has to issue the receipt voucher at the time of receipt of advance. As far as, nature of supply is concerned, he will have to treat it as inter-State supply and will have to pay IGST on it.

If later on it is supplied that it was imparted in Hyderabad Branch (intra-State supply), then as per Section 19 of IGST Act, it says that person will pay correct tax (here, it is CGST+SGST, being found as intra-State supply) without interest and claim the refund of IGST paid.

Q177. What are the mandatory details required in the invoice/ document issued by a Goods Transport Agency?

Ans. A GTA supplying services in relation to transportation of goods by road in a goods carriage, is required to have the following details in its invoices (in addition to other details required):

- (a) Gross weight of the consignment
- (b) Name of the Consignor and the Consignee
- (c) Registration number of the goods carriage in which the goods are transported
- (d) Details of goods transported
- (e) Details of place of origin and destination
- (f) GSTIN of the person liable to pay tax (whether as consignor, consignee or GTA).

Q178. Sultan Industries Ltd., Vijaywada, entered into a contract with Prakash Entrepreneurs, Vijaywada, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.

Ans. As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

Q179. MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?

Ans. Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Q180. The aggregate turnover of Sangri Services Ltd. exceeded Rs. 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advice Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

Ans. As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded Rs. 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

Q181. Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.

Ans. A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017].

Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

Q182. Discuss the provisions relating to issuance of refund voucher under CGST Act and rules thereunder.

Ans. Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a Receipt Voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a Refund Voucher against such payment.

[Section 31(3)(e) read with rule 51]

Q183. Is a registered person liable to pay tax under reverse charge under section 9(3)/9(4) of the CGST Act required to issue an invoice? Discuss the relevant provisions under CGST Act and rules thereunder.

Ans. Recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/services/both which are notified for reverse charge purposes. Such supplies can be received from a registered or an unregistered supplier [Section 9(3)].

Further, recipient [who is registered] is also liable to pay tax where taxable goods/services/both have been received from an unregistered supplier [Section 9(4)].

A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue an Invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier.

[Section 31(3)(f) & (g) read with second proviso to rule 46 and rule 52]

Q184. Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules thereunder.

Ans. Provision related to Credit Note:-

As per section 34 (1), where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

As per section 34 (2), any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Provision related to Debit Note:-

As per section 34 (3), where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

As per section 34 (4), any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.

Q185. What is the time period within which invoice has to be issued for supply of services?

Ans. As per Rule 47 of the CGST Rules, 2017 (Chapter VI- Tax Invoice, Credit and Debit Notes), Invoice has to be raised within 30 days of supply of service.

Q186. What is the time period within which invoice has to be issued in a case involving continuous supply of goods?

Ans. Where successive statements of accounts/ successive payments are involved, the invoice shall be issued before/at the time each such statement is issued or each such payment is received.

Q187. What is the time period within which invoice has to be issued in a case involving continuous supply of services?

Ans.

- a) Due date of payment is ascertainable from the contract:- on or before the due date of payment;
- b) Due date of payment isn't ascertainable from the contract:- before or at the time when the supplier of service receives the payment;
- c) payment is linked to the completion of an event:- on or before the date of completion of that event.

Q188. What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?

Ans. Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

- i. before/at the time of supply or
- ii. 6 months from the date of removal
whichever is earlier.

Q189. Is an agent required to maintain any set of books of accounts?

Ans. Yes as per Rule 56(11) of the CGST Rules, 2017, every agent referred in section 2(5) of the CGST Act, 2017 shall maintain accounts containing:

1. particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such principal separately;
2. particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
3. particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
4. details of accounts furnished to every principal; and
5. tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Q190. Is there any specific set of records to be maintained by the provider of works contract service?

Ans. Yes as per Rule 56(14) of the CGST Rules, 2017, the registered person providing works contract service shall maintain the accounts showing-

1. the names and addresses of the persons on whose behalf the works contract is executed;
2. description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
3. description, value and quantity (wherever applicable) of goods or services utilized in the execution of each works contract;
4. the details of payment received in respect of each works contract; and
5. the names and addresses of suppliers from whom he has received goods or services.

Q191. Is there any specific record to be maintained by custodian of goods?

Ans. Yes, as per Rule 56(17) of the CGST Rules, 2017, the clearing and forwarding agent or the carrier of goods shall maintain true and correct records in respect of such goods handled by him on behalf of the registered person.

Q192. In case of more than one place of business, whether the records are required to be maintained only at principal place of business?

Ans. No, where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business. Moreover, in case of additional places of business, the accounts relating to each place of business shall be kept at such places of business concerned (provided such place is specified in the certificate of registration). Such books of account shall include any electronic form of data stored on any electronic device.

Q193. What shall be the treatment of incorrect entries made in the registers, accounts or documents?

Ans. As per Rule 56(8) of the CGST Rules, 2017, if incorrect entries (except those of clerical nature) are made in the registers, accounts or documents, they shall be scored out under attestation. Thereafter, the correct entry shall be recorded. Further, where the registers and other documents are maintained electronically, a log of every edited or deleted entry shall be maintained.

Q194. What shall be the consequence if any document, register, or books of accounts belonging to a registered person are found at any premises other than those mentioned in the certificate of registration?

Ans. As per Rule 56(10) of the CGST Rules, 2017, unless it is proved otherwise, if any document, register, or books of accounts belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

Q195. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans. 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. Such goods shall be

released only on payment of the applicable tax and penalty or upon furnishing of security.

Q196. What action can be taken for transportation of goods without valid documents or attempted to be removed without proper record in books?

Ans. 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. Such goods shall be released only on payment of the applicable tax and penalty or upon furnishing of security.

Q197. Who all can generate E-way bill (EWB)?

Ans. Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000 or the threshold prescribed (in each State/Union Territory) in relation to supply; or reasons other than supply; or inward supply from unregistered person shall generate EWB.

It means, the consignor or consignee, as a registered person or a transporter of the goods can generate the EWB. The unregistered transporter can enroll on the common portal and generate the EWB for movement of goods for his clients.

Q198. Whether EWB may be generated if the consignment value is less than Rs. 50,000?

Ans. Yes, the registered person or the transporter, as the case may be, may generate EWB voluntarily, even if the value of consignment is less than Rs. 50,000.

However, Proviso 3 and 4 to Rule 138(1) of the CGST Rules 2017 mandatorily requires a registered person to generate an EWB irrespective of the value of consignment where:

- the goods are to be sent by the principal located in one State or Union Territory to a job worker in other State or Union Territory.
- handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24 of the CGST Act.

Q199. Who has been casted with the ultimate responsibility of generating EWBs? Consignor, consignee or the transporter?

Ans. The primary responsibility to generate EWB shall be of the registered person who causes the movement of goods, i.e. the consignor or the consignee, as the case may be. However, if such consignor or consignee doesn't generate the EWB, it may be generated by transporter as well, if authorized by the registered person.

Also, in case of supply of goods by an unregistered person to registered person, the liability to generate EWB is on the recipient.

Q200. Whether EWB would be required, if transportation is done in one's own vehicle or through a public transport?

Ans. Yes, as per Rule 138 (2), it has been provided that EWB shall be required to be generated, in case the goods are transported by consignor or consignee in his own vehicle or in a hired one or a public conveyance, by road. In such case, the registered person causing the movement of goods may raise the EWB after furnishing the vehicle no. in Part B of FORM GST EWB – 01 if the value of goods being transported is more than Rs. 50,000.

Q201. How shall one calculate the distance and validity of goods in case of supply through multi-modal transport?

Ans. The distance and the validity of EWB shall remain the same even if the goods are supplied through a multi- modal transport. In order to calculate the validity of the EWB, the distance to be covered by all the modes combined together must be taken into consideration. The validity provided in the CGST Rules is as under:

The "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period

expiring at midnight of the day immediately following the date of generation of e-way bill. For example:

- Suppose eway bill generated on April 1, 2018 at 5 p.m. for transport of cargo which will cover a distance of 90 kms. This eway bill will be valid for one day (till mid night of April 2, 2018);
- Suppose eway bill generated on April 1, 2018 at 5 p.m. for transport of cargo which will cover a distance of 190 kms. This eway bill will be valid for two days (till mid night of April 3, 2018).

Note:- Supplier handed over the goods to the transporter on April 1, 2018. Part A of the eway bill was submitted by the supplier on April 1, 2018 after updating the GSTIN of the transporter. Transporter loaded the goods on the truck on April 3, 2018 and completed Part B of the eway bill by updating the vehicle number. In this case, the validity of the eway bill commences from April 3, 2018.

Q202. What is the liability of generation of EWB in case of transportation of goods through e-commerce?

Ans. Generally, in case of an E-Commerce business model, the logistics is handled by an independent third party logistic service provider. So, in such a case 4 parties are involved in the transaction (seller, buyer, logistic service provider and E-Commerce operator). Therefore, in such cases where the goods are to be transported through an e-commerce operator, on an authorization from consignor, Part A of the EWB may be furnished by the E-Commerce operator and Part B of the EWB may be furnished either by the E-Commerce operator or by the third party logistic service provider.

Q203. Whether any other document needs to be provided to the transporter in addition to EWB, for movement of goods?

Ans. In accordance with Rule 55A read with Rule 138A of the CGST Rules, the person in-charge of conveyance shall carry

- Tax Invoice or Delivery Challan or Bill of Supply, as the case may be; and
- a copy of the EWB in physical form or the EWB 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:

EWB is an additional document and not a substitute for Tax Invoice, delivery challan or any other prescribed document for the said transaction.

Q204. Can the EWB be deleted?

Ans. The EWB once generated cannot be deleted. However, it can be cancelled by the generator within 24 hours of its generation. If it has been verified by any proper officer within 24 hours, then it cannot be cancelled. Further, EWB can be cancelled if, either goods are not transported or are not transported as per the details furnished in the EWB. A recipient has right to cancel/ reject the EWB within 72 hours of its generation or actual receipt of goods, whichever is earlier.

Q205. In case of High Sea Sale Transactions – Whether EWB is required?

Ans. EWB is required for movement of goods within the country. In case of High Sea Sales as the supply is affected before the goods cross the custom frontiers of India, EWB is not required to be generated. When the ultimate buyer files bill of entry, he is required to generate EWB for movement of goods from port to his place of business.

Q206. Whether EWB is required to be generated for the movement of goods between CFS /ICD to port in the course of importation and exportation of goods?

Ans. Rule 138(14) of the CGST Rules 2018, provides that no EWB is required to be generated in respect of:

- Movement of goods from the port, airport, air cargo complex and land customs station to an ICD or a CFS for clearance by Customs in the course of importation.
- where the goods are being transported—
 1. under customs bond from an ICD or a CFS 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
 2. under customs supervision or under customs seal

Therefore, EWB is not required for movement of goods between CFS/ICD to port or vice versa in the course of importation and exportation of goods.

Q207. How to handle “Bill to” - “Ship to” invoice in e-way bill system?

Ans. Sometimes, the tax payer raises the bill to somebody and sends the consignment to somebody else as per the business requirements. There is a provision in the e-way bill system to handle this situation, called as ‘Bill to’ and ‘Ship to’.

In the e-way bill form, there are two portions under ‘TO’ section. In the left hand side - ‘Billing To’ GSTIN and trade name is entered and in the right hand side - ‘Ship to’ address of the destination of the movement is entered. The other details are entered as per the invoice.

In case ship to state is different from Bill to State, the tax components are entered as per the billing state party. That is, if the Bill to location is inter-state for the supplier, IGST is entered and if the Bill to Party location is intra-state for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within state or outside the state.

Q208. Whether multiple invoices can be clubbed in one E way bill? If yes, then to what extent?

Ans. The value of goods determined in the invoice shall be regarded as the value of consignment, on the basis of which it is decided whether the consignor or consignee is required to generate EWB or not. Therefore, a separate EWB is required to be generated for every individual invoice where value of corresponding consignment exceeds Rs.50,000.

Q209. If the goods are taken from one State to another for the purpose of display in exhibition, whether EWB is required to be generated?

Ans. EWB would be required to be generated, where the value of the consignment exceeds Rs. 50,000.

Q210. How to generate the EWB in case goods are to be moved to a weighbridge situated outside the factory and invoice cannot be issued unless goods are weighed?

Ans. EWB is not required to be generated where the goods are to be transported up to a distance of 20 kms for the purpose of weighment from the place of business of consignor to a weighbridge, or, from the weighbridge back to place of consignor. However, such movement should be along with delivery challan to be covered under relaxation of EWB generation.

Q211. What if the vehicle is stuck at a particular point in the journey due to calamity or traffic jam?

Ans. The goods are required to be transported within the validity period of the EWB. However, it is provided that under circumstances of exceptional nature, the transporter may generate another EWB after updating the details in Part-B of FORM GST EWB-01. These circumstances could be said to be in the nature of exceptional nature.

However, in the absence of specific meaning of the term “exceptional nature”, further clarification is required.

Q212. What if the same invoice contains both categories of goods i.e. ones exempted for the purpose of EWBs and taxable, then whether EWB needs to be generated?

Ans. It is to be noted that the explanation to the Rule 138(1) provides that consignment value for the purpose of EWB shall be the value, determined in accordance with the provisions of Section 15, declared in invoice or delivery challan or bill of supply as the case may be. However, it shall exclude the value of exempt supply where the invoice is issued in respect of both exempted and

taxable supply of goods. Therefore, the value of taxable goods only shall be considered for the purpose of consignment value.

Q213. A registered person has purchased a new mobile phone for Rs. 75,000 and carrying with him on motorized vehicle. Whether EWB is required to be generated?

Ans. Yes. It appears that if the movement is caused by a registered person, EWB is required to be generated for goods exceeding value of Rs. 50,000.

Q214. A person has been shifting his households from one State to another on account of job change. Whether EWB is required to be generated?

Ans. Used personal and household effects have been covered in the Annexure to the Rule 138 in respect of which EWB is not required to be generated. Hence, such person is not required to generate EWB in such cases.

Q215. How to consider consignment value in case goods is being moved for renting purpose. Do we need to take the value of goods or value of the rent charged on goods?

Ans. The consignment value is the value of goods to be determined under section 15 of the CGST Act including applicable tax thereon. The rent charged represents the value of service portion whereas EWB is to be generated for the value of goods for which movement is to be undertaken. Hence, in such cases, the value to be considered should be of the goods not the rental charges charged by the supplier of services. The movement could be based on delivery challan based on which EWB may be generated.

Q216. Supply of goods through pipeline, whether oil, petroleum, gases, water, electricity etc. whether EWB is required to be generated?

Ans. EWB is required to be generated when movement of goods is through motorized conveyance. Further, the EWB portal has 4 modes of transportation i.e. road, air, rail and ship. As the transportation of goods through pipeline may not involve movement of goods through motorized vehicle, there may not be need to generate EWB for such movement of goods.

Q217. An outdoor catering company is transporting utensils and other accessories for catering outside the kitchen, interstate or intra state. Whether EWB is necessary? If yes what are the documents to be attached with the EWB? If not under which document, it has to be dispatched?

Ans. The EWB is required for every movement of goods, even if it is for the purpose other than supply. When the goods are transported by caterer for use by him in the course of making supply of catering services, it could be said to be movement of goods by him for himself/ self-use. Though there is no supply of utensils and other materials to the customer, yet there is movement of goods and hence EWB is required to be generated. Such EWB may be generated against delivery challan, by providing “Outward” movement and “For own use” under the reason for transportation.

Q218. A farmer carries the goods from his farm to Mandi for the purpose of sale therein. Whether there is requirement to generate EWB?

Ans. Many of the agricultural produces have been exempted from the levy of GST. Wherever items to be transported is exempted from GST, there is no need to generate EWB. However, if the goods being transported by farmer are in the nature of taxable goods, EWB has to be generated.

Q219. Where goods are supplied on “as is-where is” basis, whether EWB is required to be generated?

Ans. EWB is not required to be generated for supply of goods unless it involves movement of goods through motorized conveyance. In case of sale of goods on “as is – where is” basis, there is no movement of goods. Hence, there is no need to generate EWB in case of such instances.

Q220. Whether it is required to generate EWB in case of movement of empty containers?

Ans. Rule 138(14) of the CGST Rules 2018, provides that a registered person is not required to generate an EWB where the empty cargo containers are being transported. This exemption may be applicable in case of transportation of empty bins or containers which are returned to the original supplier by customer.

Q221. In many cases where manufacturer or wholesaler is supplying to retailers, or where a consolidated shipment is shipped out, and then distributed to multiple consignees, the recipient is unknown at the time the goods are dispatched from shipper’s premises. A very common example is when FMCG companies send a truck out to supply kirana stores in a particular area. What needs to be done in such cases?

Ans. In such cases, EWB shall be generated for outward movement of goods. No supply is being made, movement is caused on behalf of self. In such cases,

delivery challan may be used for generation of EWBs. All the provisions for delivery challan need to be followed along with the rules for EWBs.

Q222. Where an invoice is in respect of both goods and services, whether the consignment value should be based on the invoice value (inclusive of value of services) or only on the value of goods. Further, whether HSN wise details of service is also required to be captured in Part A of the EWB in such case.

Ans. Consignment value and HSN needs to be determined for goods only not for services as only the goods are in movement and EWB needs to be generated accordingly.

Q223. Shiva Enterprises is a supplier of goods. Its turnover has exceeded Rs. 2 crore in current financial year. Discuss whether Shiva Enterprises is required to get its accounts audited by the Chartered Accountant or Cost Accountant under GST law.

Ans. Section 35(5) of the CGST Act read with rule 80 of the CGST Rules, 2017 provides that every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds Rs. 2 crores. Since the turnover of Sindhu Enterprises has exceeded Rs. 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

Q224. Malini Services Ltd. is a supplier of management consultancy services. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?

Ans. Section 36 of the CGST Act stipulates that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Q225. Mahesh Groups has started making taxable supplies. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1) of the CGST Act, 2017.

Ans. Section 35(1) of the CGST Act, 2017 stipulates that a true and correct account of following is to be maintained:

- a) production or manufacture of goods;
- b) inward and outward supply of goods or services or both;
- c) stock of goods;
- d) input tax credit availed;
- e) output tax payable and paid
- f) such other particulars as may be prescribed.

Q226. Swadesh Restaurant has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in rule 56 of the CGST Rules, 2017.

Ans. Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4) of the CGST Rules, 2017:

(i) Stock of goods:

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

(ii) Details of tax:

Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Q227. ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to maintained by Raghav & Sons as per rule 56(11) of the CGST Rules, 2017.

Ans. Rule 56(11) of the CGST Rules, 2017 provides that every agent shall maintain accounts depicting the-

- a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- d) details of accounts furnished to every principal; and
- e) tax paid on receipts or on supply of goods or services effected on behalf of every principal

Q228. What are the possible debits and credits to Electronic tax liability register?

Ans. The possible debits and credits to Electronic tax liability register are as follows:

Debit	Credit
<ul style="list-style-type: none">the amount payable towards tax, interest, late fee or any other amount payable as per the return filed by the said person;the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceeding under the Act or as ascertained by the said person;the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; orany amount of interest that may accrue from time to time.	<ul style="list-style-type: none">Electronic credit ledger (Payment of Amount deducted u/s 51 or amount collected u/s 52, amount payable on Reverse Charge basis)Amount payable u/s 10, any amount payable towards interest, penalty, fee or any other amount under the Act)Electronic cash ledgerRelief given by the Appellate Authority or Appellate Tribunal or CourtReduction in penalty (if any)

Q229. What are the possible debits and credits to Electronic credit ledger?

Ans. The possible debits and credits to Electronic credit ledger are as follows:

Debit	Credit
<ul style="list-style-type: none">Discharge of any liability in accordance with Section 49;Towards claim for refund of unutilized amount.	<ul style="list-style-type: none">Input tax credit claimed;Reversal of amount debited earlier, on account of final rejection of refund (FORM GST PMT-03).

Q230. What are the possible debits and credits to Electronic cash ledger?

Ans. The possible debits and credits to Electronic cash ledger are as follows:

Debit	Credit
<ul style="list-style-type: none">• Discharge of any liability in accordance with Section 49• Towards claim for refund of any amount	<ul style="list-style-type: none">• Payment made through challan on receipt of CIN• Amount deducted under Section 51 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted• Amount collected under Section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was collected• Reversal of amount debited earlier on account of final rejection of refund (FORM GST PMT-03)

Q231. Will the input tax credit claimed by a taxable person get added to the balance in electronic cash ledger?

Ans. No, input tax credit will appear separately in the 'electronic credit ledger' maintained in the common portal.

Q232. Can one use input tax credit for payment of interest/penalty?

Ans. No, as per Section 49(4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax' payable only. As per Section 2(82) of the CGST Act, 2017, 'Output tax' in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest/penalty.

Q233. Can one use input tax credit for payment of tax under reverse charge basis?

Ans. No, the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'. Further, the definition of output tax u/s 2(82) specifically excludes tax payable under reverse charge basis.

Therefore, input tax credit cannot be used for payment of tax under reverse charge basis.

Q234. The following are details of purchases, sales, etc. effected by ABC Ltd. a registered manufacturer under CGST Act, 2017:

1. Purchased Raw material 'A' from local dealer Rs. 78,400 (inclusive of GST @ 12%)
2. Purchased Raw material 'B' from local dealer Rs. 1,18,000 (inclusive of GST @ 18%)
3. Purchased capital goods from within the state to be used in manufacture of the taxable goods Rs. 2,56,000 (inclusive of GST @ 28%). Depreciation @ 15% to be charged.
4. Other Direct and Indirect expenses Rs. 51,600.
5. Earned 5% profit margin on total cost.
6. During the month of November, 2017 only 70% production is sold within the state and applicable GST rate being 18%.

Calculate the amount of CGST and SGST payable after utilizing input tax credit for the month of November, 2017 assuming no opening balance of input tax credit is available.

Ans. Computation of Invoice Value and Tax liability:

Particulars	Rs.
Purchase Raw material 'A' from local dealer [Rs. 78,400 x 100 ÷ 112] [WN]	70,000
Purchase Raw material 'B' from local dealer [Rs.1,18,000 x 100 ÷ 118]	1,00,000
Depreciation expense [(Rs. 2,56,000 - 2,56,000 x 28 ÷ 128) x 15%]	30,000
Other direct and indirect expense	51,600
Total Cost of goods manufactured	2,51,600
Cost of goods sold (70% of goods produced were sold)	1,76,120
Add: Profit margin @ 5% of cost	8,806
Total Sales Value	1,84,926

Working Note:

Credit will be available for CGST and SGST charged by local suppliers. Hence the same is not to be included in the cost.

Computation of CGST and SGST payable for the month of December, 2017 after utilizing the available input tax credit [assuming no ITC opening balance]

Particulars	CGST (Rs.)	SGST (Rs.)
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Output tax liability for the month of December, 2017 @ 18% (being CGST 9% and SGST 9%) [Rs.1,84,926 x 18%]	16,643	16,643
Less: Eligible input tax credit in respect of purchases of – Raw material 'A' [70,000 x 12%]	(4,200)	(4,200)
Raw material 'B' [1,00,000 x 18%]	(9,000)	(9,000)
Capital Goods [2,00,000 x 28%]	(28,000)	(28,000)
CGST / SGST credit to be carried forward	(24,557)	(24,557)

Q235. ABC Ltd., a registered manufacturer in state of Tamilnadu provides the following particulars for tax period of January, 2018.

1. Inputs purchased within state Rs. 1,00,800 (includes GST @ 12%).
2. Machinery purchased on 01/01/2018 for Rs. 1,50,000 (excluding 18% GST) from a local dealer in Tamilnadu, eligible for input tax credit. Depreciation rate 30% p.a.
3. Manufacturing expenses including profits Rs. 3,00,000
4. Goods produced were sold outside Tamilnadu with IGST @ 12% on sales.

Calculate the amount of CGST and SGST payable after utilizing input tax credit for the month of January, 2018 assuming no opening balance of input tax credit available.

Ans. Computation of Invoice value and Tax liability (amount in Rss.):

Particulars	Amount
Inputs purchased from local dealer [WN1]	90,000
Depreciation expense $(1,50,000 \times 30\% \times 1/12)$	3,750
Manufacturing Expense and profits	3,00,000
Total Sales Value	3,93,750
Output tax liability (IGST @ 12%)	47,250
Less: Input tax credit available on: [WN2]	
Inputs	5,400
- CGST	5,400
- SGST	
Capital goods	
- CGST	13,500
- SGST	13,500
IGST to be deposited in cash	9,450

Working Note:

1. Credit will be available for CGST and SGST charged by local suppliers,

hence same is not to be included in the cost.

- The credit of CGST and SGST is to be utilised for payment of CGST and SGST output tax liability respectively and any amount remaining thereafter shall be utilised towards IGST liability.

Q236. Mr. D of Vijaywada purchased goods from Mr. J of Jaipur amounting to Rs. 2,00,000 (excluding 18% GST) in the month of January, 2018. He also purchased raw material worth Rs. 1,75,000 from local dealer who has opted for composition scheme. He incurred also Rs. 90,000 as direct and indirect expenses and added profit margin @ 25% of cost.

Mr. D sold 70% of finished goods to Mr. P of Punjab with IGST @ 18% payable thereon, and 30% of finished goods to Mr. H of Vijaywada with CGST and SGST @ 9% each payable thereon.

Compute the net CGST, SGST and IGST liability and input tax credit if any, for the month of January, 2018.

Ans. Computation of Invoice value and Tax liability:

Particulars	Amount
Purchases of raw material from Mr. J of Jaipur [WN-1]	2,00,000
Purchases of raw material from dealer opted for composition scheme [WN-2]	1,75,000
Other direct and indirect expenses	90,000
Total Cost of goods manufactured	4,65,000
Add: Profit margin @ 25% of cost	1,16,250
Total Sales Value	5,81,250
Goods sold to Mr. P of Punjab (70% of goods produced were sold)	4,06,875
Goods sold to Mr. H of Vijaywada (30% of goods produced were sold)	1,74,375

Particulars	CGST	SGST	IGST
Goods sold to Mr. P of Punjab	-	-	73,238
Goods sold to Mr. H of Vijaywada	15,694	15,694	-
Less: Eligible input tax credit in respect of purchases of – Raw material (from Jaipur)	-	-	(36,000)
CGST/SGST/IGST to be paid in cash	15,694	15,694	37,238

Working Note:

- Credit will be available for IGST charged by inter-state suppliers, hence same shall not be included in the cost.

2. No input tax credit shall be admissible on purchases made from dealer who has opted for the composition scheme.
3. The credit of IGST is to be utilised for payment of IGST output tax liability first and if any amount remains thereafter then such amount is to be utilised towards payment of CGST and SGST liability in order

Q237. How many types of electronic ledger are there?

Ans.

- a) Electronic cash ledger
- b) Electronic credit ledger
- c) Electronic liability register

Q238. What are the main features of GST payment process?

Ans. Electronic tax liability register is a register to be maintained in the common portal of GST in FORM GST PMT-01 to record all liabilities of a taxable person. Part-I is for recording return related liabilities and Part-II is for recording other than return related liabilities.

Electronic credit ledger is a register to be maintained in the common portal of GST in FORM GST PMT-02 to record input tax credit claimed, utilization, reversal and refund.

Electronic cash ledger is a register to be maintained in the common portal of GST in FORM GST PMT-05 to record deposit of tax, interest, penalty and other amounts, utilization thereof and refund.

GST Payment is done through Electronic Liability Register.

Debit in Electronic Liability Register

- the amount payable towards tax, interest, late fee or any other amount payable as per the return filed by the said person;
- the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceeding under the Act or as ascertained by the said person;
- the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or
- any amount of interest that may accrue from time to time.

Credit in Electronic Liability Register

- Electronic credit ledger (Payment of Amount deducted u/s 51 or amount collected u/s 52, amount payable on Reverse Charge basis, amount

payable u/s 10, any amount payable towards interest, penalty, fee or any other amount under the Act)

- Electronic cash ledger
- Relief given by the Appellate Authority or Appellate Tribunal or Court • Reduction in penalty (if any)

Q239. Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?

Ans. No, as per Section 49 (4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.

As per Section 2 (82) of the CGST Act, 2017, output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest, penalty, and payment under reverse charge.

Q240. Whether the rate of tax of 1% specified in section 52 is CGST or SGST or a combination of both CGST and SGST?

Ans. The rate of TCS as specified in CGST Act, 2017 is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 2%.

Q241. What will be the availment of input tax credit in case of default in filing of return and payment of tax?

Ans. If there is default in payment of tax and filing of returns, input tax credit will become ineligible as per Section 16(2)(d) of the CGST Act, and interest will be calculated on gross tax payable.

Q242. State whether Tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios -

- a) Titan sells watch on his own through its own website?
- b) ABC limited who is dealer of Titan brand sells watches through flipkart, amazon etc.?

Ans. Answers for both the scenarios is as follows:

As per Section 52 of CGST Act, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one percent., as may be notified by the Government on the recommendations of a.

- a. the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. Hence, if the person sells on his own, TCS won't be applicable.
- b. If ABC limited who is dealer of Titan brand sells watches through Flipkart, Amazon etc., then the provision of TCS will be applicable to flipkart, amazon.

Q243. I am a non-resident taxable assessee. What are the returns to be furnished by me?

Ans. 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.

Q245. Whether returns have to filed if the assessee has not affected any inward or outward supply during a tax period?

Ans. Yes, assesses has to file Nil GSTR-1 /Form3B return electronically even though not effected any supply.

However, a non-resident taxable person, an input service distributor, a person liable to deduct tax at source and person liable to collect tax at source would not be liable to furnish returns (in Forms GSTR-5, GSTR-6, GSTR-7 and GSTR-8, respectively) if they have not affected any supplies requiring them to furnish the respective forms (as mentioned above).

Q246. Who is required to file an Annual Return? In what format such return should be furnished? What is the due date for furnishing such return?

Ans. All registered taxable persons are required to furnish an Annual Return for every financial year, electronically, in FORM GSTR-9. A registered taxable person paying opting to pay tax under the composition scheme is required to file the annual return in FORM GSTR-9A. However, the below mentioned registered taxable persons are not required to file an Annual Return:-

- a) Input Service Distributor
- b) Person liable to deduct tax at source as per Section 51 (for the purpose of TDS)
- c) Person liable to collect tax at source as per Section 52 (for the purpose of

TCS)

d) Casual taxable person

e) Non-resident taxable person

Such returns should be furnished on or before 31st December of the following the end of financial year.

Q247. Whether the Annual Return is required to be audited by Chartered Accountant / Cost Accountant?

Ans. If the turnover of the registered taxable person exceeds Rs. 2 crores, then the Annual Return is required to be audited by a Chartered Accountant or Cost Accountant. Further, they also have to submit reconciliation statement in FORM GSTR-9C. If the turnover does not exceed Rs. 2 crores, the registered taxable person can himself compile the details in FORM GSTR-9 and submit the return.

Q248. What are the consequences of not filing any particular return?

Ans. If the registered taxable person fails to furnish the return in FORM GSTR-3B or GSTR-4 or GSTR-5 or GSTR- 6 or GSTR-7 or Final return in FORM GSTR-10, the department will issue a notice in FORM GSTR-3A asking the registered taxable person to furnish the particular return within 15 days.

Q249. What happens if the taxable person files the return under the GST law but does not make payment of taxes?

Ans. Under the GST law, the filing of return without payment of taxes shall not be considered as a valid return. Section 2(117) defines a valid return. It means, a return furnished under sub-section (1) of Section 39 on which self-assessed tax has been paid in full. It is only the valid return that would be used for allowing input tax credit (ITC) to the recipient. In other words, unless the supplier has paid the entire self-assessed tax and filed his return and the recipient has filed his return, the ITC of the recipient would not be confirmed.

Q250. Mr. X, a composition tax payer, did not render any taxable supply during the quarter July-September. Is he required to file any goods and service tax return?

Ans. Composition tax payer is required to furnish return u/s 39 for every quarter even if no supplies have been effected during such period. In other words, filing of Nil return is also mandatory.

Therefore, Mr. X is required to file quarterly return even if he did not render any taxable supply during the quarter July- September.

Q251. If a return has been filed, how can it be revised if some changes are required to be made?

Ans. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1/2 in the tables specifically provided for the purposes of amending previously declared details.

As per section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month/quarter during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest. The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1 and GSTR2.

Q252. Mr. A, a regular taxpayer, files his GSTR-1, GSTR-2 and GSTR-3 for the month of August, 2017 by the respective due dates. Mr. A receives a communication from the GST common portal on 28th September, 2017 that ITC of Rs. 15,000 claimed by him is in excess of the tax declared by Mr. B (supplier concerned) in his valid tax return. Mr. B has filed his Annual Return for financial year 2017 - 18 on 10th November, 2018.

Answer the following questions:

- (i) When is Mr. B required to rectify the discrepancy? Is there any maximum time limit beyond which the discrepancy cannot be rectified?**
- (ii) What will happen if Mr. B does not rectify the discrepancy?**

Ans.

- (i)** Mr. B can rectify the discrepancy in valid GSTR-3 for the month of September, 2017 in terms of section 42(5). As per section 39(9), the maximum time limit for the rectification of the discrepancy is the earlier of the following two dates:
 - (a)** Due date of filing of return for the month of September following the end of the financial year 2017-18 [i.e., 20th October, 2018] or
 - (b)** Actual date of filing of the relevant annual return i.e., 10th November, 2018.

Thus, Mr. B cannot rectify the discrepancy beyond 20th October, 2018.

- (ii) If Mr. B does not rectify the discrepancy in his valid return for September, 2017, the excess ITC claimed by Mr. A will be added in the output tax liability of Mr. A in his GSTR-3 for the month of October, 2017. If Mr. B does not rectify the discrepancy by 20th October, 2018, Mr. A will never be able to reclaim ITC of Rs. 15,000.

Q253. Which type of taxpayers need to file Annual Return?

Ans. All taxpayers filing return in GSTR-1 to GSTR-3, other than ISD's, casual/non-resident taxpayers, taxpayers under composition scheme, TDS/TCS deductors, are required to file an annual return. Casual tax payers, non-resident taxpayers, ISDs and persons authorized to deduct/collect tax at source are not required to file annual return.

Q254. Is an Annual Return and a Final Return one and the same?

Ans. No. Annual Return has to be filed by every registered person paying tax as a normal taxpayer. Final Return has to be filed only by those registered persons who have applied for cancellation of registration. The Final return has to be filed within three months of the date of cancellation or the date of cancellation order.

Q255. Do Input Service Distributors (ISDs) need to file separate statement of outward and inward supplies with their return?

Ans. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of inward and outward supplies.

Q256. Is there any other case apart from those covered in Section 54, wherein refund can be claimed under GST?

Ans. Yes, as per Section 55 of the CGST Act, the Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to certain conditions and restrictions, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Further, the Central Government vide Notification No. 20/2018 – Central Tax dated 28th March, 2018 has increased the time limit from 6 months to 18 months from the last date of the quarter in which such supply was received within which the specified persons shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority.

Q257. Would interest be paid on the amount of refund sanctioned?

Ans. Yes, in terms of section 56, interest would be paid at a rate not exceeding 6%, if the refund is not sanctioned within 60 days from the receipt of refund application.

It is pertinent to note that the Government vide Notification No. 13/2017 – Central Tax dated 28-6-2017 has prescribed the rate of interest @ 6%.

Q258. If refund is made based on the order of appellate authority, then would interest be paid?

Ans. Yes, interest (at a rate not exceeding 9%) would be computed and paid for the period starting from expiry of 60 days from the date of application consequent to the order till the date of actual refund of tax.

It is pertinent to note that the Government vide Notification No. 13/2017 – Central Tax dated 28-6-2017, has prescribed the rate of interest @ 9%.

Q259. How would the interest be computed and paid?

Ans. Interest would be computed and paid for the period after expiry of 60 days from the receipt of refund application till the date of actual refund of tax.

Q260. Which are the services on which refund of unutilized excess ITC shall not be allowed under sub-section (3) of section 54 of the said CGST Act, 2017?

Ans. No refund of unutilized ITC would be allowed in respect of service specified in para 5 (b) of Schedule II of the CGST Act, 2017, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

Para 5 (b) of Schedule II of the CGST Act, 2017 contains entry relating to “Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier”.

Q261. List the persons entitled to refund under section 55 of the CGST Act, 2017.

Ans. Government may, on the recommendations of the Council, by notification, specify:

- (i) any specialised agency of the United Nations Organisation; or
 - (ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or
 - (iii) Consulate or Embassy of foreign countries; and
 - (iv) any other person or class of persons as may be specified in this behalf,
- who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them [Section 55 of the CGST Act].

Q262. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

Ans. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].

Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

Q263. Royal Industries wishes to claim refund of ITC accumulated on account of inverted duty structure. Can it do so? If yes, specify the time-limit within which the refund can be claimed by Royal Industries as provided under the CGST Act. Note: Output supplies of Royal Industries are not nil rated/fully exempt supplies.

Ans. Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council, refund of the unutilized ITC is allowed [First proviso to section 54(3)]. Thus, in the given case, Royal Industries is entitled to refund.

Further, a person claiming refund is required to file an application before the expiry of 2 years from the relevant date. The term 'relevant date' as explained in

the Explanation to section 54 of the CGST Act, inter alia, stipulates that in case of refund of unutilized ITC on account of inverted duty structure is relevant date is the end of the financial year in which such claim for refund arises.

Q264. A taxable person has mistakenly paid CGST and SGST for an inter-State supply. Subsequently, when he discovers the same, can he adjust the IGST liability against the wrongly paid CGST and SGST?

Ans. Section 77, inter alia, stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra- State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

The IGST liability cannot be adjusted against the CGST and SGST wrongly paid.

Q265. ABC Ltd. sends the goods to XYZ & Co. for making finished goods on 30-08-2017. What are the tax implications, in the following cases if GST @ 18% is levied:

- I. XYZ & Co. sends the goods back to ABC Ltd. within one year of being sent.**
- II. XYZ & Co. sells the goods directly to the customer on behalf of ABC Ltd.**

Ans. As per Section 143 of CGST Act 2017, supply of goods to a job worker without payment of tax is permissible upon an intimation. In the given example, the implications are as follows:

- On supply of goods to XYZ & Co., as per the section 143 of CGST Act 2017, no tax shall be payable on supply of goods to XYZ & Co., However, the tax will be payable if finished goods is not returned before one year from 30-08-2017.
- XYZ & Co. sends the finished goods back to ABC Ltd.: As per the act, there is no tax liability on returning of goods back to the principal i.e. ABC Ltd. within a period of one year. Hence, post completion of Job work, no tax is leviable on finished goods returned to ABC Ltd.
- XYZ & Co. sells the finished goods on behalf of ABC Ltd.: Section 143 also allows the job worker to directly sell the goods on behalf of principal, wherein the liability to pay tax is of the principal and not the job worker. ABC Ltd. is liable to pay GST on sale of finished goods to customer by XYZ & Co.

However, ABC Ltd. must declare the premises of XYZ & Co., as 'additional place of business' and the sale of finished goods will form part of aggregate turnover of ABC Ltd. Such a declaration is not required in case where:

- I. Job worker is registered under section 25; or
- II. Principal is engaged in supply of notified goods.

Q266. ABC Ltd. sends the goods (inputs) to XYZ & Co. for further processing on 30-08-2017. The value of goods sent for Job work is Rs. 2,00,000. What are the tax implications, in following cases, if GST @ 18% is levied:

- I. **XYZ & Co. sends the processed goods back to ABC Ltd on 30-11-2017**
- II. **XYZ & Co. sends the processed goods back to ABC Ltd on 30-10-2018.**

Ans. XYZ & Co. sends the processed goods back to ABC Ltd. on 30-11-2017: As per Section 143 of the Act, Principal can remove the goods without payment of tax and take input tax credit provided inputs sent for job work are returned back within one year of removal. Otherwise, it shall be treated as supply from principal to Job worker as on 30-08-2017 and subject to tax along with interest.

- I. In the present case, as the inputs are received back on 30-11-2017 i.e. before completion of one year, and hence no tax is payable.
- II. XYZ & Co. sends the processed goods back to ABC Ltd. on 30-10-2018: In the present case, the goods are received after the period of one year and hence, ABC Ltd. needs to pay the tax along with the interest on the supply made by him to XYZ & Co. Hence, ABC Ltd. need to pay Rs. 18,000 (CGST) and Rs. 18,000 (SGST) along with specified interest.

Q267. ABC Ltd. sends the machinery to XYZ & Co. for fixing of some technical issue and maintenance on

15.8.2017. The value of goods sent to XYZ & Co. is Rs. 2,00,000. What are the tax implications, in the following cases:

- I. **XYZ & Co. sends the machinery back to ABC Ltd. on 30.12.2018.**
- II. **XYZ & Co. sends the machinery back to ABC Ltd. on 30.09.2020.**

Ans. In the given example the implications are as follows:

- I. XYZ & Co. sends the machinery back to ABC Ltd. on 30.12.2018: As per Section 143 of the Act, Principal can remove the goods without payment of tax and take input tax credit provided capital goods sent for job work are returned back within 3 years of removal. Otherwise, it shall be treated as supply from principal to job worker as on 15.8.2017 and subject to tax along with interest.

In the present case, as the machinery is received back on 30.12.2018 i.e. before completion of 3 years, and hence no tax is payable.

- II. XYZ & Co. sends the machinery back to ABC Ltd. on 30.9.2020: In present case, the machinery is received after the period of three years and hence ABC Ltd. needs to pay tax taken along with the interest. ABC Ltd. needs to pay Rs. 18,000 (CGST) and Rs. 18,000 (SGST) along with specified interest.

Q268. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Ans. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q269. When tax shall become payable in GST on manufactured goods sent to a Job worker for carrying out tests or any other process not amounting to manufacture under the earlier law?

Ans. Tax will be payable in GST on manufactured goods sent to a job worker prior to the appointed day for carrying out tests or any process not amounting to manufacture under the earlier law if such goods are not returned to the manufacturer within six months (or within the extended period of maximum two months) from the appointed day. Further, the input tax credit enjoyed by the manufacturer will liable to be recovered if the aforesaid goods are not returned within six months from the appointed day. – Section 141(3)

Q270. How is the assessment made if the taxable person is not able to determine the value of goods and/or services or determine the rate of tax?

Ans. Where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him. [(Section 60(1)]

Q271. Whether Self-Assessment and provisional assessment are mutually exclusive?

Ans. Yes, if the taxable person opts for self-assessment, he cannot opt for provisional assessment for the same period for same supply. However, he can opt for provisional assessment if he is unable to determine taxable value / tax liability/ (rate of tax) for any subsequent periods.

Q272. What conditions needs to be satisfied by a taxable person for assessment of taxes on provisional basis?

Ans. The proper officer may allow for payment of tax on provisional basis subject to execution of bond in prescribed form along with surety / security as the proper officer may deem fit binding the taxable person for differential tax, if any. [Section 60 (2)]

Q273. What is the time limit for passing final assessment order in case of provisional assessment?

Ans. Section 60(3) of the CGST Act 2017 provides that the proper officer shall, within a period of six months from the date of communication of the provisional assessment order U/s 60 (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment. However, the time limit of six months can be further extended on sufficient cause being shown and for reasons to be recorded in writing in the following manner:

- a) by the Joint / Additional Commissioner for a further period of six months;
- b) by the Commissioner for such further period not exceeding four years.

Q274. What does scrutiny of returns mean under CGST Act, 2017?

Ans. The CGST Act, 2017 empowers proper officer to scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in a manner as may be prescribed. In case of any discrepancies, the proper officer should seek explanation from registered person. On receipt of satisfactory explanation, the proper officer is not required to take any further action. [Section 61 (1) &(2)]

In the event, after accepting the discrepancies, no satisfactory explanation is furnished within a period of thirty days or such further extended time. If the taxable person fails to take the corrective measures in the return for the month in which discrepancy is accepted, the proper officer may initiate audit under Section 65 or special audit under Section 66 or inspection, search and seizure under Section 67 or proceed to determine the tax and other dues under Section 73 or Section 74.

Q275. Whether, The CGST Act, 2017 provides for assessment in case of registered taxable person who does not furnish returns under Section 39 and 45?

Ans. In terms of Section 62(1) of the CGST Act, 2017, the proper officer is empowered to assess the tax liability on such registered taxable person to the best of his judgment taking into account all the relevant materials which is available, or which is gathered and issue an assessment order in FORM GST ASMT-13 within a

period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates. (Section 62(1) read with Rule 100 (1) of the CGST Rules)

Q276. What is the Time limit for passing the assessment order on the unregistered person?

Ans. The proper officer, in relation to assessment of taxes on the unregistered taxable person, shall issue the assessment order in FORM GST ASMT-15 within 5 years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Q277. Please clarify below related to summary assessment U/s 64 of CGST Act, 2017:-

- a) Whether proper officer can proceed suo-moto to assess the tax liability of any person on possession of relevant evidence?
- b) Whether the summary assessment can be initiated based on mere change in opinion of proper officer?
- c) Whether summary assessment can only be initiated on previously filed return (u/s 34 and u/s 40)?
- d) Whether the Additional / Joint Commissioner can withdraw the summary assessment order only on application by the taxable person?

Ans.

- a) No, the proper officer has to obtain prior permission of Additional/Joint Commissioner to proceed to assess the tax liability.
- b) No, mere change in opinion cannot be treated as evidence for initiation of summary assessment.
- c) Summary assessment can be initiated on any taxable person. Submission of return u/s 39 and u/s 45 is not prerequisite.
- d) The Additional / Joint Commissioner can, on his own motion may withdraw the summary assessment order in the event such order is erroneous and thereafter may follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful mis- statement etc., or otherwise.

Q278. What is the remedy available to the taxable person if the order passed U/s 64 is erroneous?

Ans. On an application made in FORM GST ASMT-17 within 30 days by taxable person from the date of receipt of order passed summary assessment order the Additional/Joint Commissioner may withdraw such order and follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful mis-statement etc., or otherwise. {U/s 64 (2)}

Q279. What kind of audits are envisaged under the law?

Ans. Following audits are envisaged under law:

1. Audit by Tax Authorities [S. 65]
2. Special Audit by Chartered Accountant or Cost Accountant nominated by Commissioner [S.66]
3. Audit of Accounts by Chartered Accountant or Cost Accountant where turnover exceeds prescribed limits i.e. 2 crores [S. 35(5), 44(2), Rule 80(3)]

Q280. What is the scope of audit U/s 65?

Ans. In an audit, examination is done:

- (a) to verify the correctness of
 1. Turnover declared
 2. Taxes paid
 3. Refund claimed and
 4. Input Tax credit availed
- (b) to assess the compliance with the provisions of this Act or rules made thereunder. [S. 2(13)]

Q281. Whether audit by officer can be done for a person other than registered person U/s 65?

Ans. Audit by officer cannot be ordered for a person who is not registered even if he is required to be registered as per the provisions of the law. [S. 65(1)]

Q282. What shall be the period and frequency of audit U/s 65?

Ans. The period of audit shall be a financial year. Although, multiple financial years can also be audited. [R.101(1)].

Q283. What process of audit is required to be followed by the officer in case audit is conducted U/s 65?

Ans. Following process is to be followed for conduct of audit by officer:

1. Proper Officer shall verify the documents, correctness of turnover, exemptions and deductions claimed, the rate of tax applied, input tax credit availed and utilized and refund claimed. [R.101(3)]
2. Proper Officer shall record the observations in audit notes. [R. 101(3)]
3. Proper Officer may inform discrepancies noticed during audit to registered person [R.101(4)]
4. Registered Person shall reply to discrepancies [R. 101(4)]
5. Proper officer shall finalize findings of audit only after due consideration of reply [R. 101(4)]
6. On the conclusion of audit, Proper Officer shall inform the Registered Person whose records are audited about the:
 - findings
 - reasons for findings,
 - assessee's rights and obligations. [S. 65(6)]
7. Information of findings, reasons, right and obligations shall be made within 30 days(in FORM GST ADT-02) [S. 65(6)]

Q284. What action will be initiated when the audit conducted u/s 65(1) results in a demand?

Ans. Where the audit u/s 65(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under Section 73 or Section 74.

Q285. At what stage the directions of special audit can be given?

Ans. At any stage of scrutiny, inquiry, investigation or any other proceedings, having regard to the nature and complexity of the case and interest of revenue, a direction to Registered Person to get its accounts examined and audited can be given [S.66(1)]

Q286. Whether already audited accounts are also covered by special audit?

Ans. Special Audit may be directed even if accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.[S.66(3)]

Q287. How to deal with detection of short paid taxes as a result of special audit?

Ans. Where audit results in detection of tax not paid/short paid /erroneous paid or ITC wrongly availed or utilized, Proper Officer may initiate action u/s 73 or 74 [S.66(6)]

Q288. Whether the phrase “nature and complexity of the case” is defined in the Act?

Ans. No, Section 66 does not define the phrase “nature and complexity of the case’. However, there is enough jurisprudence under the Income Tax Laws to determine what will constitute complexity of the case.

Q289. Is summary assessment order to be necessarily passed against the taxable person?

Ans. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

Q290. In what cases, assessment order passed by proper officer may be withdrawn?

Ans. Assessment Order passed by proper officer may be withdrawn in the following cases:-

(i) Assessment of Non-filers of return – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order

(ii) Summary Assessment – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Q291. What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?

Ans. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

a) Proceed to conduct audit under section 65 of the Act;

- b) Direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
- c) Undertake procedures of inspection, search and seizure under section 67 of the Act; or
- d) Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

Q292. Who can conduct audit of taxpayers?

Ans. There are three types of audit prescribed in the GST Act(s) as explained below:

- a. **Audit by Chartered Accountant or a Cost Accountant:** Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a chartered accountant or a cost accountant. (Section 35(5) of the CGST Act)
- b. **Audit by Department:** The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST Act)
- c. **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST Act)

Q293. What powers can be exercised by an officer during search?

Ans. 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 the Act) from the premises searched. During search, the officer has the power to seal or break open the door of the any 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, electronic devices, box, receptacle if access to such almirah, electronic devices, box, receptacle is denied and in which any goods, account, registers or documents are suspected to be concealed.

Q294. Is there any special document required to be carried during transportation of taxable goods?

Ans. Yes. 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.

Q295. What are the safeguards provided for a person who is placed under arrest?

Ans. The following are the safeguards provided for a person who is placed under arrest:

- a) If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a Magistrate within 24 hours of his arrest;
- b) If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Q296. Can the proper officer access business premises of a registered taxable person?

Ans. Yes. An audit party of CGST, deputed by proper officer or a cost accountant or chartered accountant nominated under section 66 have access to any business premises without issuance of a search warrant for the purposes of revenue carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of.

Further, in terms of Section 71(1), an officer authorised by a proper officer not below the rank of Joint Commissioner can also have access business premises of a registered person.

Q297. Who can order for carrying out "Inspection" and under what circumstances? Can any premises be inspected by CGST officers?

Ans. As per Section 67(1), Inspection can be carried out by any officer of Central tax only upon a written authorization in Form GST INS-01 given by a proper officer not below the rank of Joint Commissioner. Such proper officer can give such authorization only if he has reasons to believe that the person concerned has –

- a) suppressed any transaction of supply;

- b) suppressed stock of goods in hand;
- c) claimed excess input tax credit;
- d) contravened any provisions of this Act or rules made thereunder to evade tax;
- e) a transporter or an owner or operator of a warehouse or godown or any other place, has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

CGST officer authorized by the proper officer not below the rank of Joint Commissioner shall have the powers to carry out inspection of any of the following places / premises:

any place of business of a taxable person;

any place of business of a person engaged in the business of transporting goods;

any place of business of an owner or an operator of a warehouse or godown;

any other place

Q298. Who can order for search and seizure under the provisions of CGST Act?

Ans. Proper officer not below the rank of Joint Commissioner can himself or authorize any other CGST officer in FORM GST INS-01 (Chapter-XVII-Inspection, Search and Seizure of the CGST Rules) to carry out search and seize goods, documents, books or things. Such authorization can be given only where the proper officer 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 / hidden in any place. Where any goods, documents, books or things are liable for seizure, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

Q299. What powers can be exercised by an officer during valid search?

Ans. 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 the Act) from the premises searched. During search, the officer has the power to seal or break open the door of the any 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, electronic devices, box, receptacle if access to such almirah, electronic devices, box, receptacle is denied and in which any goods, account, registers or documents are suspected to be concealed.

Q300. What are the duties of the person to whom summons has been issued?

Ans. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject, which is the subject matter of examination and to produce such documents and other things as may be required.

Q301. What is the prescribed monetary limit for different levels of officers for issuance of show cause notices and orders under Section 73 and 74?

Ans. As per Circular No. 31/05/2018-GST dated 9.02.2018, the monetary limit prescribed for different levels of officers for issuance of show cause notices and orders under Section 73 and 74 is as below:

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 and 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 and 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs.10 lakhs	Up to Rs.20 lakhs	Up to Rs.20 lakhs
Deputy or Assistant Commissioner	Above Rs.10 lakhs up to Rs.1 crore	Above Rs.20 lakhs up to Rs.2 crore	Above Rs.20 lakhs up to Rs.2 crore
Additional or Joint Commissioner	Above Rs.1 Crore	Above Rs.2 Crore	Above Rs.2 Crore

Q302. Please explain time limit for issue of notice U/s 73 & U/s 74 by giving example.

Ans. Under Section 73: Let say, in case Mr. A has not paid the tax on a transaction considering it to be exempt for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least three months prior to the last date of order of demand.

The order of demand shall be served within 3 years from 31st December 2018 i.e. 31st December 2021. Therefore, show cause notice shall be required to be served by 30th September, 2021.

Under Section 74: Let say, in case Mr. A has not paid the tax on a transaction for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least six months prior to the last date of order of demand

The order of demand shall be served within 5 years from 31st December 2018 i.e. 31st December 2023. Therefore, show cause notice shall be required to be served by 30th June, 2023.

Q303. Whether proper officer can issue similar show cause notice for any periods other than those covered under section 73(1)?

Ans. Yes, it can be issued for subsequent periods on same grounds raised in the show cause notice. The proper officer may serve a statement under section 73(3) along with a summary electronically in Form GST DRC-02 containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized where the grounds relied upon by the proper officer for such periods are the same as are mentioned in the earlier notice issued under section 73(1). The service of such statement shall be deemed to be service of show cause notice on the person chargeable with tax.

Q304. Whether notice for a period of 5 years is valid even if charge of suppression, fraud and misstatement are not sustained?

Ans. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time would be applicable for date of issue of order.

Q305. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid to Government?

Ans. No. Notice can be issued on detection of such cases without any time limit. Once show cause notice is issued, the proper officer shall pass the order within 1 year from the date of issue of such notice.

Q306. How is the amount of surplus left after adjustment with tax payable dealt with?

Ans. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q307. What happens if the tax demand is not paid within the time limit prescribed under section 78?

Ans. The proper officer shall initiate recovery proceedings if the tax demand is not paid within 3 months from the date of service of the order.

Q308. Whether the proper officer can require a taxable person to make payment of tax demand within shorter period lesser than 3 months?

Ans. Yes. If it is expedient in the interest of the revenue, the proper officer, after recording reasons in writing, may require taxable person to make such payment within shorter period as may be prescribed by him.

Q309. Whether any amount payable by the taxable person under this Act is a first charge on his property?

Ans. Yes. As per section 82 of CGST Act 2017, notwithstanding anything to the contrary contained in any law for the time being force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, first charge shall be on –

- a) the property of taxable person in respect of any amount payable by such taxable person, or
- b) the property of any other person on account of tax, interest or penalty which he is liable to pay to the Government.

Q310. In case of recovery of SGST/UTGST by CGST officer in the course of recovery of CGST, where the total amount recovered is Rs. 5 Crore whereas the amounts due were Rs. 5 Crores of CGST and Rs. 10 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?

Ans. Rs. 5 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 1:2.

Q311. 'A' requested the Commissioner to provide the benefit to pay Rs. 5,00,000/- under installments. Commissioner directs 'A' to make the payment in five monthly installments. How to pay the interest?

Ans. It is assumed that the actual date on which the tax was required to be paid as 06.06.2015. Benefit of instalment was granted by Commissioner on 25.06.2016 to be paid w.e.f. 02.06.2016 onwards over 5 installments.

Payment date	Interest to be paid as per section 45 – No of days	Amount on which interest to be paid
1st Instalment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	Rs. 100,000

2nd Instalment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	Rs. 100,000
3rd Instalment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	Rs. 100,000
4th Instalment – 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	Rs. 100,000
5th Instalment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	Rs. 100,000

Q312. Please provide comment for below with respect to provision U/s 81.

- **Mr. Defrauder was served with a notice of demand for Rs. 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worth Rs. 35 Lakhs under his name to the name of his wife for a consideration of Rs. 10,000/-. Is this act of Mr. Defrauder valid?**
- **In the above illustration, if transfer of property was for a consideration of Rs. 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?**
- **On Mr. Perfect, notice was issued on 10th June 2018. However, the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for Rs. 35 lakhs. Is the sale void or valid?**

Ans.

- As per section 81, the said transfer would be void and the property worth Rs. 35 Lakhs would be considered still to be in the hands of Mr. Defrauder.
- In this case the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.
- The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

Q313. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued U/s 84?

Ans. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

- the Commissioner is required to issue fresh notice of demand only for enhance demand.
- If already recovery proceedings of Govt. dues is served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q314. Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth Rs. 50,000 in the month of

August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

Ans. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Q315. Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74 of the CGST Act, 2017.

Ans. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

- (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
- (ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

Q316. Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.

Ans. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 of the CGST Act, 2017 are as under:

- (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to [Section 73(10)].
- (ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date

for filing of annual return for the financial year to which demand relates to [Section 74(10)].

Q317. A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?

Ans. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

Q318. F2 Industries, a registered person under GST, has sold whole of its business to Rolex Manufacturers. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Ans. Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Q319. ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 89 of the CGST Act.

Ans. Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Q320. A person, liable to pay GST, interest and penalty under GST law, dies.

Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.

Ans. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Q321. Is there any penalty prescribed for any person other than the taxable person U/s 122?

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

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

Q322. Mr. A has collected tax on supply of exempted goods and did not remit the tax so collected to the Government account. Would Mr. A, be liable to penal and other consequences?

Ans. Yes, in terms of Section 122(1) (iv) of the CGST Act, 2017, collection of tax in contravention to the provisions of the CGST Act, 2017 and subsequent failure to remit the same to the credit of the Government beyond a period of 3 months from the date on which such payment becomes due is an offence attracting penalty of Rs. 10,000/- or amount equal to the amount of tax so collected, whichever is higher.

Further, in terms of Section 132(1) (d) read with Section 132(1) (I) of the CGST Act, 2017, the said offence attracts imprisonment which may extend from 1 year to 5 years based on the quantum of tax evasion.

- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

Q323. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

Ans. Section 10(5) of the CGST Act provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.

Q324. When general penalty under Section 125 of CGST Act could be imposed?

Ans. Section 125 of the CGST Act, provides for general penalty which may extend to Rs. 25,000/- on any person, who contravenes any of the provisions of this Act or any rules made thereunder. This penalty would be applicable only where no penalty is separately provided for in this Act.

Q325. Whether officer appointed under GST law has power to detain / seize the goods? When such detention or seizure could be undertaken U/s 129?

Ans. Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the GST Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure.

Q326. Under what circumstances the detained goods and conveyance seized could be released?

Ans. The goods/ conveyance could be released under the following circumstances:

- a) on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods, and in case of exempted goods on payment of an amount equal to 2% of the value of goods or twenty-five thousand rupees, whichever is less where the owner of the goods comes forward for payment of such tax and penalty;
- b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon, and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, where the owner of the goods does not come forward for payment of such tax and penalty;

c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed.
Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

Q327. Whether prosecution or other punishments could also be initiated along with confiscation or penalty?

Ans. In terms of section 131 confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall not prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Q328. Whether tax evaded under State GST Act or IGST Act would also be taken in to account for the purpose of the prosecution?

Ans. Yes. In terms of explanation to Section 132 the term tax has been defined to include amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of 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 and cess levied under the Goods and Services Tax (Compensation to States) Act.

Q329. Whether Government employee could also be prosecuted and punished under section 133?

Ans. Yes, Government servant could also be punished. However, where the person punishable is a Government servant he shall not be prosecuted for any offence under this section except with the previous sanction of the Government.

Q330. What are the consequences of an offence (U/s 137 of CGST Act) has been committed by a Company and it is proved that the offence has been committed with the consent of any director, manager, secretary or other officers of the company?

Ans. If an offence under the Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officers of the Company, then such director, manager, secretary or other officers of the Company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Q331. What are the consequences of offences U/s 137 committed by taxable person being a partnership firm or a LLP or HUF or a trust?

Ans. If offences are committed by taxable person being a partnership firm or a LLP or HUF or a trust, the partner or Karta or managing trustee respectively shall deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly.

Further, If offences are committed by partnership firm or a LLP or HUF or a trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the partner or Karta or managing trustee respectively, then such partner or Karta or managing trustee shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Q332. What is meant by compounding of offences? Is compounding of offence made after making payment of tax, interest and penalty involved in such offences U/s138?

Ans. Section 320 of the Code of Criminal Procedure defines “compounding” as to forbear from prosecution for consideration or any private motive.

Yes, compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

Q333. What happens after the offence has been compounded U/s138?

Ans. On payment of compounding amount, no further proceeding shall be initiated under the CGST Act, 2017 against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence shall stand abated.

Q334. What is the quantum of penalty for an offence mentioned under section 122(1)?

Ans. Section 122(1) provides that any taxable person who has committed any of the 21 offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

- a) Rs. 10,000/-; or
- b) An amount equivalent to, any of the following (Applicable as the case may be) –
 - (i) Tax evaded; or
 - (ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
 - (iii) Tax not collected under section 52 or short collected or collected

- but not paid to the Government; or
- (iv) Input tax credit availed of or passed on or distributed irregularly; or
- (v) Refund claimed fraudulently

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

- a) Rs. 10,000/-; or
- b) 10% of the tax due from such person

and in case of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher

Q335. Is there any penalty prescribed for a person other than the taxable person?

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

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

Q336. Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?

Ans. Both Mr. X and Mr. Y will be offender and will be liable to penalty as under: Mr. X – Penalty under section 122(3) which may extend to Rs. 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely

- (i) Rs. 10,000/- or (ii) 100% of tax evaded.

Q337. Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of Rs. 20,000/- is imposed by issue of SCN without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be

imposed. Should Mr. X proceed to pay for penalty or challenge SCN issued by department?

Ans. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

Q338. Who is an Appellate Authority?

Ans. “Appellate Authority” means an authority appointed or authorised to hear appeals as referred to in section 107. Section 107 provides that appeal shall be preferred before such Appellate Authority as may be prescribed. Rule 109A provides that for the purpose of appeal, an Appellate Authority shall be:

- a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

Q339. Under what circumstances Commissioner could direct the Officer to prefer an appeal against the order of the adjudicating authority?

Ans. The Commissioner may, on of his own motion, or upon request from the Commissioner of State tax Commissioner of Union Territory tax, call for and examine the records of any proceeding in which an adjudicating authority has passed any decision or order under the CGST Act or the SGST Act or the UTGST Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order. The Commissioner may by an order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Q340. What type of order could the Appellate Authority pass? Whether Appellate Authority could refer the case back to Adjudicating Authority?

Ans. The Appellate Authority may pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. The order shall be in writing giving details as to determination. The Appellate Authority shall, along with its order under section 107(11), issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed. However, the Appellate Authority does not have power to refer the case back to the Adjudicating Authority that passed the said decision or order.

Q341. What is the Constitution of National Appellate Tribunal and how the same is constituted? Where the National Bench and Regional Bench shall be located?

Ans. The Central Government shall on the recommendation of the GST Council by Notification constitute Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal) for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

National bench shall be located at New Delhi. The Central Government on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required.

Q342. What is State Bench or Area Bench?

Ans. The Government, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal, for exercising the powers of the Appellate Tribunal within the concerned State or Union territory. Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council.

Q343. Whether any matter could be heard by bench consisting of members less than 3 as set out above?

Ans. Yes, in the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members. Further, where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed Rs. 5 Lakhs and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

Q344. Can the Tribunal reject to entertain an appeal based on the monetary limits?

Ans. Yes. The Tribunal has been conferred with discretion to refuse to admit an appeal where:

- the tax or input tax credit involved or
- the difference in tax or input tax credit involved or
- the amount of fine, fee or penalty determined by such order, does not exceed Rs. 50,000/-

Q345. Whether other party could file cross objections against the appeal preferred by the assessee or by the department?

Ans. On receipt of notice that an appeal has been preferred under section 112, other party against whom an appeal is preferred, could file a cross objection to the appeal even though he has not preferred an appeal. A Memorandum of Cross-Objections have to be filed within 45 days from the date of receipt of the notice of appeal in FORM GST APL-06. The Tribunal shall dispose of the cross objections as if it is an appeal.

Q346. What would be consequence where there is a difference of opinion on any issue among the members of the bench?

Ans. If the Members of the Bench (National/Regional/State/Area) differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

Q347. Whether interest becomes payable on refund of pre-deposit amount?

Ans. Yes. As per sec 115 of the Act, where an amount deposited by the appellant under section 107(6) or under section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be. Interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Q348. Whether the Tribunal has power to rectify / amend the orders passed by it?

Ans. Yes, the Tribunal may amend any order passed by it under in terms of Section 113(1) so as to rectify any mistake apparent from the record. The Hon'ble Tribunal could undertake rectification on its own or on application by either of the parties to the appeal (by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal). The application for rectification shall be made within a period of three months from the date of the Order sought to be rectified.

However, no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under section 113(3), unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

Q349. Whether appeal / application / cross objections filed beyond the time limit would be entertained?

Ans. Tribunal has been conferred with powers to condone the delay upto 3 months, beyond the period of 3 months or 6 months in case of filing of appeals, where sufficient cause for the delay is shown. Similarly, delay upto 45 days could be condoned by the Tribunal in filing the memorandum of cross objections where sufficient cause for the delay is shown.

Q350. An aggrieved person received an order of the Additional Commissioner of Central Tax in relation to adjudication of a demand on 27-08-2017. However, he was aggrieved by the said order, hence he filed an appeal to Commissioner (Appeals) on 27-11-2017. The Commissioner (Appeals), in response, rejected the appeal as he was of the opinion that it was time barred. Discuss.

Ans. Section 107 of CGST Act 2017, provides that a person aggrieved by the order of adjudicating authority may appeal to the Commissioner (Appeals) within 3 months from the date of the communication to him of such decision or order.

In the given case, the aggrieved person received the order of Additional Commissioner on 27-08-2017, hence he could file the appeal to Commissioner (Appeals) within 3 months from the said date which expires on 27-11-2017. Therefore, the aggrieved person has made the appeal within time and the opinion of the Commissioner (Appeals) is not tenable.

Q351. Compute the quantum of pre-deposit required to be made on U/s 107 of the CGST Act 2017 in each of the following independent case:

- a) In an order dated 18-10-2018 issued to ABC Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000. ABC Ltd. has admitted Rs. 5,00,000 as tax liability and intends to file an appeal with the Commissioner (Appeals) against tax demand of Rs. 45,00,000.
- b) In an order dated 18-10-2018 issued to XYZ Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000 and imposed a penalty of Rs. 5,00,000. XYZ Ltd. intends to file an appeal with the Commissioner (Appeals) against the said order.

Ans.

- a) Section 107 (6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. Thus, ABC Ltd. has to pre-deposit Rs. 5,00,000 (admitted tax) and 10% of Rs. 45,00,000 (tax in dispute) = Rs. 9,50,000.
- b) Section 107 (6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. In this case since entire amount of tax demanded is in dispute, hence XYZ Ltd. has to pre-deposit 10% of Rs. 50,00,000 = Rs. 5,00,000.

Q352. Specify the amount of mandatory pre-deposit which should be made along with every appeal before the Appellate Authority and the Appellate Tribunal.

Does making the pre-deposit have any impact on recovery proceedings?

Ans. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

- a. full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- b. a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

- a. full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- b. 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, in relation to which appeal has been filed. Where the appellant has made the pre-

deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Q353. With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Ans. Section 2(99) defines “Revisional Authority” as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such “revisional authority” to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if

necessary, can revise the order after giving opportunity of being heard to the noticee. The “revisional authority” can also stay the operation of any order passed by his subordinates pending such revision.

The “revisional authority” shall not revise any order if-

- a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
- c) the order has already been taken up for revision under this section at any earlier stage.
- d) the order is a revisional order

Q354. What are the questions or matters on which advance ruling can be obtained? What are the matters on which Advance Ruling cannot be sought?

Ans. The Advance Ruling can be obtained on the following questions or matters:

- a) classification of any goods or services or both;
- b) applicability of a notification issued under provisions of the Act;
- c) determination of time and value of the 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.

Advance Ruling cannot be sought on any matters other than those specified above. Additionally, if the matter on which advance ruling is sought is already pending or decided in any proceedings in the applicant's case under any of the provisions of the Act, then the AAR shall not admit such application.

Q355. Whether the Ruling given by AAR of one State/UT shall be applicable in another State/UT?

Ans. No. The AAR is constituted under the respective State/UT Act and not the Central Act. Hence, the Ruling given by AAR of one State/UT shall be applicable only within the jurisdiction of the concerned State/UT.

Q356. What if, the members of AAR have different viewpoints on the Advance Ruling sought?

Ans. Where the members of the AAR differ on any question on which the Advance Ruling is sought, they shall state the point or points on which they differ and make a reference to the AAAR for hearing and decision on such question.

Q357. Is there any time limit within which Appellate order (AAAR) is to be passed?

Ans. The order, either confirming or modifying the ruling appealed against or referred to, shall be passed within 90 days from the date filing of appeal or reference, after giving the parties to the appeal or reference an opportunity of being heard. A copy of the Advance Ruling so pronounced duly signed by the members and certified in the manner prescribed shall be sent to the applicant and the appellant, the concerned officer/jurisdictional officer of the CGST and SGST/UTGST and the AAR after such pronouncement.

Q358. From when will the Advance Ruling be applicable?

Ans. Sec. 103(2) of the CGST Act, 2017 provides that the decision of advance ruling shall be binding unless there is change in law, facts or circumstances supporting the original Advance Ruling, have changed. Hence, unless the case is covered by the said exceptions, it shall be binding on the applicant in respect of all the transactions covered by the Ruling in case of the applicant.

Example: AAR or AAAR has decided the advance ruling and issued the order on 31st July 2018 deciding the tax shall be payable by the recipient on reverse charge on a particular transaction and later on 30th September 2018 the law gets amended on which basis the advance ruling was decided. Such advance ruling made earlier shall no longer binding on such person from the date of such amendment.

Q359. Can the Ruling issued by the AAR or order passed by the AAAR be rectified?

Ans. In case there is any error apparent on the face of the records, the AAR or AAAR as the case may be, can amend the original order passed by it, if such error is noticed by the AAAR or AAAR on its own record or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant, within a period of 6 months from the date of said order.

However, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Q360. Which are the matters enumerated in Section 97 for which advance ruling can be sought?

Ans. The Advance Ruling can be obtained on the following matters:

- a) classification of any goods or services or both;
- b) applicability of a notification issued under provisions of the Act;
- c) determination of time and value of the 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.

Q361. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objectives for setting up a mechanism of Advance Ruling are:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI)
- reduce litigation
- pronounce ruling expeditiously in a transparent and inexpensive manner

Q362. Whether goods notified u/s 147, if manufactured in India from imported goods qualify for the benefit of deemed exports?

Ans. Provisions of Section 147 apply to 'goods manufactured in India'. There is no restriction that raw materials required for manufacture of notified goods must also be manufactured in India. Hence notified goods, if manufactured from imported goods would qualify as deemed exports.

Q363. What are the circumstances when assessment/ adjudication proceedings etc are not be treated as invalid?

Ans. As per Section 160, the following proceedings:

1. Assessment
2. Re-assessment
3. Adjudication
4. Review
5. Revision
6. Appeal
7. Rectification
8. Notice
9. Summons or
10. Other proceedings

done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall not be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any old law.

Q364. What are the circumstances when service of notice/ order etc shall not be called in question?

Ans. The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Q365. Who can rectify a mistake apparent on record U/s 161?

Ans. Any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document.

Q366. Who has to bring the mistake apparent on record to the notice of the authority?

Ans. The GST authority:

1. On its own motion or
 2. Where such error is brought to its notice by (a) Any officer appointed under CGST Act or (b) An officer appointed under SGST Act or (c) An officer appointed under the UTGST Act or
 3. The affected person
- can bring the mistake apparent on record to the notice of the respective authority.

Q367. Within what period should the mistake apparent on record be brought to the notice of the authority?

Ans. The time limit is 3 months but extendable to 6 months from the date of issue of such decision or order or notice or certificate or any other document. But in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable. Such clerical error must be due to accidental slip or omission.

Q368. What is the date, the notice/ order etc. is deemed to have been served?

Ans. Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in section 169 (1).

Q369. What if the notice/ order sent through registered post/ speed post is not received by the person to whom it is intended?

Ans. As per Section 169 of CGST Act 2017, when a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Q370. When shall the particulars relating to any proceedings or prosecution be published under GST laws?

Ans. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)]

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

Q371. Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

Ans. Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

Q372. What is Anti-profiteering measure?

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

National Anti-profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or] services or both supplied by him.

Q373. LMN & Co, an unregistered supplier under GST wants to claim input tax credit and collect tax. Can it do so?

Ans. No, LMN & Co. cannot claim input tax credit and collect tax. A person without GST registration can

neither collect GST from his customers nor can claim any input tax credit of GST paid by him. However, if LMN & Co. nevertheless wants to claim input tax credit

and collect tax, it can apply for voluntary registration under section 25(3) of CGST Act, 2017.

Q376. More Ltd., registered in Vijaywada dealing in supply of electronic items transferred some of its stock to its another unit located in Haryana (inter-state transfer). Whether such self-supplies are taxable under GST?

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

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

Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-state self-supplies are not taxable subject to not opting for registration as business vertical.

Q377. Mr. Q supplied goods for the value of Rs. 10,000 to its customer Miss Prema on 01.01.20XX on the condition that payment for the same will be made within a week. However, Miss Prem made payment for the said goods on 02.02.20XX and thus paid interest amounting to Rs. 500. What is the time of supply with regard to addition in the value by way of interest in lieu of delayed payment of consideration?

Ans. As per section 12(6) of CGST Act, 2017, the time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed payment of consideration shall be the date on which the supplier received such additional consideration.

Thus, time of supply in respect of interest would be the date on which the supplier has received such additional consideration, i.e. 02.02.2018. Further, Mr. P is required to make payment on or before 20th of March, 2018.

Q378. Delhi Public School, a higher secondary school in Vijaywada, is of the view that no tax is payable on the education provided by it to its students as education plays a significant and remedial role in balancing the socio-economic fabric of the country.

Examine whether GST law provides any scope of exemption to supply of goods or services with particular reference to the contention raised by school?

Ans. Yes, GST law provides the scope of exemption to supply of goods and services. Section 11 of CGST Act, 2017 provides that in the public interest, the Central or the State Government can exempt either wholly or partly, on the recommendations of the GST council, the supplies of goods or services or both from the levy of GST either absolutely or subject to conditions. Further, the Government can exempt, under circumstances of an exceptional nature, by special order any goods or services or both.

As regards the contention raised by Delhi Public School, the same is valid in law since Notification No. 12/2017 CT (R) dated 28.06.2017 specifically wholly exempts services provided by an educational institution to its students, faculty and staff.

Q379. Mr. X of Hyderabad often participates in the jewellery exhibition at Trade Fair in Vijaywada, which is organised every year in the month of February. Mr. X applied for registration in January. The proper officer demanded an advance deposit of tax in an amount equivalent to the estimated tax liability of Mr. X.

You are required to examine whether any advance tax is to be paid by Mr. X at the time of obtaining registration?

Ans. Yes, advance tax is to be paid by Mr. X at the time of obtaining registration. Since Mr. X occasionally undertakes supply of goods in the course or furtherance of business in a State where he has no fixed place of business, thus he qualifies as casual taxable person in terms of section 2(20) of CGST Act, 2017.

While a normal taxable person does not have to make any advance deposit of tax to obtain registration, a casual taxable person shall, at the time of submission of application for registration is required, in terms of section 27(2) read with proviso thereto, to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. If registration is to be extended beyond the initial period of 90 days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond 90 days is being sought.