

PAPER – 8: INDIRECT TAX LAWS

- (i) Question paper comprises of 6 questions. Answer Question No. 1 which is compulsory and any 4 questions out of the remaining 5 questions.
- (ii) Working notes should form part of the answer.
- (iii) All questions should be answered on the basis of the position of (i) GST law as amended by significant notifications/circulars issued till 31.10.2022 and (ii) Customs law as amended by the Finance Act, 2022 and significant notifications/circulars issued till 31.10.2022.

Question 1

Vasudev is a mining contractor. He has crossed the threshold limit for registration in the preceding financial year 2022-23 and is now duly registered under GST in the State of Gujarat. He has undertaken following transactions during the month of April, 2023:

S. No.	Particulars	Value of supply in ₹ (exclusive of taxes)
(a)	Vasudev is an operating member in mining and exploration services at Aliabet Oilfield, Bhavnagar, Gujarat. He has provided certain services to the Joint Venture (JV) at same site in which he is also a member. He believes that the consideration received from the JV is 'Cost Recovery' and not taxable.	15,00,000
(b)	He has purchased certain machinery from Mumbai, Maharashtra, to render services to the JV at Aliabet Oilfield.	8,00,000
(c)	He has obtained professional services from a senior advocate of Ahmedabad, Gujarat to represent him in a matter before the Tribunal.	1,50,000
(d)	He was allotted an office on rent by the State Government of Gujarat close to the sea shore of Aliabet Oilfield.	2,50,000
(e)	He got a portion of the petroleum silt (non taxable under GST) as part of compensation while exploring the petroleum reserves at Aliabet Oilfield - which as per the contract with the government is part of 'Cost Petroleum'.	8,00,000
(f)	He sells the petroleum silt (non-taxable under GST) to a SEZ Developer in Bhavnagar, Gujarat. He has already filed LUT under GST.	7,50,000
(g)	Consideration received in the nature of recovery of bond amount in case of 3 employees leaving employment before a minimum period of 1 year as per the terms of contract.	75,000

(h)	Consideration received towards transfer of tenancy rights in Gujarat, which according to Vasudev is not liable to GST as it has suffered stamp duty.	7,00,000
(i)	Consideration received from mining lease holders for renting of 5 dumpers including driver given for transport of minerals within the mining area for a period of 2 years.	5,00,000
(j)	He has been assigned the mining right from Government and the amount of IGST involved against royalty payment is ₹ 3,00,000.	

Additional information:

- (1) Vasudev has filed bond/LUT to claim benefits under zero rated supplies.
- (2) Assume the CGST and SGST rates to be 2.5% each and IGST rate to be 5% on supply of goods.
- (3) Assume the CGST and SGST rates to be 9% each and IGST rate to be 18% on supply of services.
- (4) There is opening balance of ₹ 34,000 in the Electronic Cash ledger (SGST). And there was brought forward ITC of ₹ 15,000 in Electronic Credit ledger (IGST), ₹ 50,000 in Electronic Credit ledger (CGST), ₹ 9,000 in Electronic Credit ledger (SGST).

From the above details, compute the minimum net GST payable by Vasudev in cash (CGST, SGST or IGST as the case may be) for the month of April, 2023. Working notes should form part of your answer. **(14 Marks)**

Answer

Computation of tax payable in cash

S. No.	Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
A.	GST liability on outward supply				
(i)	Consideration for services provided as an operating member to the Joint Venture [The operating member is providing the mining and exploration service to the joint venture, and thus, the consideration received therefor is not cost petroleum and hence, is liable to tax.]	15,00,000	1,35,000 (15,00,000 x 9%)	1,35,000 (15,00,000 x 9%)	

(ii)	Compensation received in the form of petroleum silt, which, as per the contract with the Government, is part of cost petroleum [Cost petroleum is not a consideration for service to the Government and thus, is not taxable.]	8,00,000	Nil	Nil	Nil
(iii)	Sale of petroleum silt to a SEZ developer [Supply to SEZ developer is a zero-rated supply made under a bond/LUT and no tax is payable on the same.]	7,50,000	Nil	Nil	Nil
(iv)	Bond amount recovered from employees leaving employment before stipulated period [Not a supply since bond amount recovered is not a consideration for tolerating the act of such premature quitting of employment.]	75,000	Nil	Nil	Nil
(v)	Transfer of tenancy rights ¹ [Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable even though stamp duty has been paid on the same.]	7,00,000	63,000 (7,00,000 x 9%)	63,000 (7,00,000 x 9%)	
(vi)	Renting of dumpers including driver ² [Taxable.]	5,00,000	45,000 (5,00,000 x 9%)	45,000 (5,00,000 x 9%)	
Total tax liability on outward supplies			2,43,000	2,43,000	

¹ It is assumed that the immovable property in respect of which the tenancy rights are transferred, is a commercial property and the same is located in Gujarat.

² Renting of dumpers including driver to mining lease holders has been assumed to be an intra-State transaction. Alternatively, it is also possible to assume the said transaction to be an inter-State transaction. In that case, IGST of ₹90,000 will be charged.

B. GST liability on inward supplies under reverse charge (RCM)					
(i)	Professional services provided by senior advocate to Vasudev, i.e. a business entity	1,50,000	13,500 (1,50,000 x 9%)	13,500 1,50,000 x 9%)	
(ii)	Renting of office provided by the State Government to Vasudev (a registered person)	2,50,000	22,500 (2,50,000 x 9%)	22,500 (2,50,000 x 9%)	
(iii)	Assignment of mining right by Government to Vasudev (a registered person)				3,00,000
Total tax liability on inward supplies under reverse charge			36,000	36,000	3,00,000
C. Input tax credit					
(i)	Opening balance		50,000	9,000	15,000
(ii)	Inter-State purchase of machinery	8,00,000			40,000 (8,00,000 x 5%)
(iii)	Professional services from senior advocate ³	1,50,000	13,500 (1,50,000 x 9%)	13,500 (1,50,000 x 9%)	
(iv)	Renting of office	2,50,000	22,500 (2,50,000 x 9%)	22,500 (2,50,000 x 9%)	
(v)	Assignment of mining right				<u>3,00,000</u>
Total ITC			86,000	45,000	3,55,000
Note: [ITC may be availed for making zero rated supply even if such a supply is an exempt supply. Sale of petroleum silt, being a non-taxable supply, is an exempt supply but since it is also a zero-rated supply, ITC can be availed for making such supply.]					

³ It has been most logically assumed that professional services received from advocate are in the nature of the legal services.

D.	Computation of tax payable in cash				
	Total tax liability on outward supplies		2,43,000	2,43,000	
	Less: ITC of IGST Note: ITC of IGST to be used first before ITC of CGST and SGST		1,57,000	1,98,000	
	Less: ITC of CGST and SGST		86,000 (CGST)	45,000 (SGST)	
	Add: Reverse charge liability payable in cash without set off of ITC [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]		36,000	36,000	3,00,000
	Total tax liability payable in cash		36,000	36,000	3,00,000
	Less: Balance of Electronic Cash Ledger			<u>(-)34,000</u>	
	Net minimum tax liability payable in cash		36,000	2,000	3,00,000

Question 2

- (a) *M/s Diva Fashions (Proprietor Ms. Diva), a registered supplier in Ludhiana (Punjab) under GST law, has made the following supplies in the month of February 2023:*
- Supply of designer silk dresses packed in designer boxes to a boutique in Mumbai, (Maharashtra) as per contract entered with the boutique amounting to ₹ 25,00,000.*
 - Supply of 600 kits (at ₹ 1,000 each kit) amounting to ₹ 6,00,000 to Mrs. Arora in Amritsar (Punjab). Each kit consisted of 1 silk dupatta, 1 sari brooch and 1 lipstick.*
 - M/s Diva Fashions organizes a fashion show in Chandigarh. Zion Exports Ltd, a registered entity in Jaipur (Rajasthan) has sponsored the show for which M/s Diva Fashions received ₹ 7,50,000 from it.*
 - 200 kits are given as free gifts to customers on the occasion of 5th anniversary of M/s Diva Fashions. Each kit consists of 1 silk dupatta and 1 sari brooch. Cost of each kit is ₹ 350. The open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.*

- (v) Professional services provided free of cost by Ms. Diva to her independent married sister to set up her own boutique in Delhi. Cost of providing such services is ₹ 1,00,000, but the open market value of such services and of services of like kind and quality is not available.
- (vi) M/s Diva Fashions enters into a contract on 1st February, 2021 for 3 years with Miss Shikha, a local model to act as a brand ambassador for their products for ₹ 1 lakh (exclusive of GST - 18% IGST, 9% CGST and SGST each) per annum. Miss Shikha terminated the contract on 2nd February 2023. As per the contract, M/s Diva Fashions received 25% of the total contract fees paid to Miss Shikha as the contract is terminated before 3 years, on 15th February, 2023. Miss Shikha had received the contract fee for 2 years at the time of termination of the contract.

Other information is given below -

- (a) All above amounts are exclusive of GST.
- (b) Mrs. Arora paid interest of ₹ 8,850 (inclusive of GST) for delay in making payment to M/s Diva Fashions.
- (c) Assume rates of GST as under:

S. No.	Particulars	Rate of IGST	Rate of CGST	Rate of SGST
1	Silk Dresses	18%	9%	9%
2	Designer Boxes	28%	14%	14%
3	Silk Dupatta	12%	6%	6%
4	Sari Brooch	18%	9%	9%
5	Lipstick	5%	2.5%	2.5%
6	Sponsorship received from Zion Exports Ltd.	28%	14%	14%
7	Professional services	18%	9%	9%

From the above information, compute the total GST liability of M/s Diva Fashions for the month of February 2023. Working notes should form part of your answer. **(9 Marks)**

- (b) ABC Industries of Mumbai imported certain goods from United States of America. Expenses incurred with respect to import are given below:

Cost of Goods	\$ 40,000
Transport charges from factory of exporter to the port for shipment	\$ 800
Freight charges from US to India	\$ 5,000
Lighterage charges paid by ABC Industries at the port in India	₹ 12,000

Freight incurred from port of entry to Inland container depot	₹ 40,000
Ship demurrage charges paid at Indian port of importation	₹ 12,000
ABC Industries incurred designing charges necessary for those goods which were paid to WOW Designers in New Delhi.	₹ 75,000

Date of Bill of Entry is 16.02.2023 (Rate of BCD 20%, Notified Exchange Rate by CBIC is ₹ 70 per US \$)

Date of Entry Inward 16.03.2023 (Rate of BCD 10%, Notified Exchange Rate by CBIC is ₹ 75 per US\$)

SWS rate is 10% and rate of IGST is ₹ 12%. Compute Assessable Value of imported goods, Basic Customs Duty and IGST. Ignore GST Compensation Cess. **(5 Marks)**

Answer

(a) **Computation of total GST liability of M/s Diva Fashions for the month of February, 2023**

Particulars	Amount (₹)	CGST (₹)	SGST (₹)	IGST (₹)
Supply of silk dresses in designer boxes [Since supply of silk dresses in designer boxes is naturally bundled, it is a composite supply which is treated as the supply of the principal supply (viz. silk dresses). Accordingly, rate of principal supply, i.e. silk dresses will be charged.]	25,00,000			4,50,000 [25,00,000 x 18%]
Supply of kits of silk dupatta, sari brooch and lipstick [Since supplies are not naturally bundled and a single price is being charged, it is a mixed supply. It is treated as supply of that particular supply which attracts highest tax rate (i.e., sari brooch).]	6,00,000	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	

Since sponsorship services are provided to a body corporate - Zion Exports Ltd., tax is payable under reverse charge by recipient.	7,50,000			Nil
Free gifts to customers [Not a supply as it is made without consideration and is also not covered in Schedule I because customers are not related persons.]	Nil			
Professional services provided free of cost [Not a supply as it is made without consideration and is also not covered in Schedule I because sister being independent is not a related person.]	Nil			
Fee received for termination of contract [Being 'liquidated damages', they are merely compensation for loss due to breach of the contract and not the consideration for tolerating non-performance of contract. ⁴]	Nil			
Interest received for delayed payment (excluding GST) [Includible in value of original supply. Further, since it is received in February itself, time of supply is when it is received i.e. February ⁵ .]	7,500 [8,850 x 100/118]	675 [7,500 x 9%]	675 [7,500 x 9%]	
GST liability		54,675	54,675	4,50,000

⁴ Vide Circular No. 178/10/2022 GST dated 03.08.2022

⁵ It has been most logically assumed that interest pertains to the supply of 600 kits made to Mrs. Arora. Hence, same rate of 18% is applied on it.

(b) Computation of assessable value, basic customs duty and IGST payable

Particulars	Amount (\$)
Cost of goods	40,000
Transport charges up to port	800
Designing charges [Not includible since undertaken in India.]	-
FOB value	40,800
	Amount (₹)
FOB value in Indian rupees @ ₹ 70/- per \$ [Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered]	28,56,000
Freight charges up to India [US \$ 5,000 x ₹ 70]	3,50,000
Ligherage charges paid by the importer [Cost of transport includes ligherage charges.]	12,000
Ship demurrage charges [Cost of transport includes ship demurrage charges]	12,000
Freight incurred from port of entry to Inland Container depot [Not includible in assessable value]	Nil
Insurance charges @ 1.125% of FOB value [Insurance charges are included @ 1.125% of FOB value since they are not ascertainable.]	<u>32,130</u>
Assessable value	32,62,130
Add: Basic customs duty @ 10% [Rate prevalent on the date of presentation of bill of entry or on the date of entry inwards, whichever is later.]	3,26,213
Add: Social Welfare surcharge @ 10%	<u>32,621.30</u>
Total	36,20,964.30
Add: IGST @ 12% of ₹ 36,20,964.30	4,34,515.72 Or 4,34,516 (Rounded off)

Question 3

(a) Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST as per the provisions of GST law including notifications issued thereunder:

- (i) Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December, 2022 is as under:

No. of tents rented	Amount of rent charged per tent per day	Nature of occupancy
10	₹ 600	Single
15	₹ 1,000	Double

- (ii) Fables Infotech LLP, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with Neeta Services for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.
- (iii) HumTum Services Limited, registered under GST provided catering services to Baljatan Anganwadi, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February, 2023.
- (iv) 50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).
- (v) Mr. Ashok rented his residential flat to his friend Dr. Kishore, who is not registered under CGST Act, 2017 for use as his medical clinic at a monthly rent of ₹ 15,000.

(5 Marks)

- (b) Mr. X, a trader dealing exclusively in supply of goods and paying tax under normal scheme (also eligible for composition scheme), submit the following details for coming financial year 2023-24. You are required to determine which scheme will be more beneficial to him and whether Mr. X should opt for composition scheme. Estimated data for coming financial year 2023-24 are as follows:

Particular	Amount (₹)
Inward supplies of goods from registered suppliers (amount exclusive of GST and goods chargeable to normal rate of GST @12%)	70,00,000
Outward supplies of goods to unregistered customers (sale price of goods inclusive of GST) - Normal Rate of GST is @12%	90,00,000

Other information is as given below:

- (i) Inherent nature expenses ₹ 4,50,000 per year under both the schemes.
- (ii) Books of account maintenance cost under normal scheme ₹ 2,00,000 yearly whereas under composition scheme it will be ₹ 75,000 yearly.
- (iii) Return filing expenses under normal scheme ₹ 48,000 yearly whereas under composition scheme it will be ₹ 12,000 yearly. **(4 Marks)**
- (c) Importer Mr. M is engaged in importing and distributing of sports goods. He imports sports product from Mr. Q of Malaysia and sells it under brand name "TrueSpeed". To publicize the product, Mr. M spent on AMP (Advertisement, Marketing and Promotion) of the product.

The department contended that AMP expenses incurred by M were required to be added in the value of imported goods. Whether the contention of department is correct?

(5 Marks)

Answer

- (a) (i) **Taxable:** Since, exemption with respect to services provided by a campsite for lodging purposes has been withdrawn. Thus, there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.
- (ii) **Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.
- (iii) **Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable to pay GST.
- (iv) **Taxable:** Since short duration program provided by IIMs are not any qualification recognized by law, GST is payable in the given case.
- (v) **Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.

(b)

Particulars	Composition scheme (₹)	Regular scheme (₹)
Tax payable under GST law	80,357.14 [₹ 80,35,714.29 ⁶ × 1%]	9,64,285.71 [₹ 80,35,714.29 × 12%]
Less: ITC on inward supplies	A person opting for composition scheme is not entitled to any ITC.	8,40,000 [₹ 70,00,000 × 12%]
Net amount payable under GST law	80,357.14	1,24,285.71
Add: Inherent expenses	4,50,000	4,50,000
Add: Books of accounts maintenance cost	75,000	2,00,000
Add: Return filing expenses	12,000	48,000
Add: Cost of inward supplies	78,40,000	78,40,000
Total cost involved	<u>84,57,357.14</u>	<u>86,62,285.71</u>

Thus, it can be concluded that Mr. X should opt for composition scheme for FY 2023-24 as it is more beneficial for him. by ₹ 2,04,928.56⁷

Note - Outward supplies excluding GST/ Turnover in State = ₹ 80,35,714.29 (₹ 90,00,000 × 100/112)

- (c) The contention of the department that AMP expenses incurred by M were required to be added to the value of imported goods was not correct.

As per a judicial pronouncement⁸, it was decided that AMP expenses incurred by importer for promotion of brand are not includible in assessable value of imported goods on the following grounds:

Agreement did not specify that a fixed amount/percentage of the invoice value of the imported goods, was obliged to be spent by the assessee towards AMP, as a condition of sale/ import.

⁶ The rate of tax payable under composition levy in case of trader of goods is 1% (½% CGST+ ½% SGST/UTGST) of the turnover of taxable supplies of goods in the State/Union territory. Since outward supplies are inclusive of GST, it implies that all the outward supplies are taxable supplies and thus, the turnover in State is turnover of taxable supplies of goods.

⁷ It has been assumed that GST is not charged on the inherent expenses, books of account maintenance cost and return filing expenses.

⁸ *Commissioner of Customs v. M/s Indo Rubber and Plastic Works*, upheld by SC.

It was a post import activity incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale.

The assessee importer was not obliged to give any account of expenditure incurred by it to the exporter, unless such expenditure was incurred at the instance of the exporter under stipulation of reimbursement.

Question 4

- (a) EverYoung Manufacturers LLP, a registered supplier under GST is engaged in manufacturing of ayurvedic cosmetic products within the State of Gujarat. It provides the following information for the month of January, 2023

Particulars for the month of January, 2023	Rate of CGST	Rate of SGST	Value of supply (excluding GST)
Outward supply of skin care products	2.5%	2.5%	50,00,000
Outward supply of skin care products	6%	6%	50,000
Inward supply of Inputs for skin care products	6%	6%	35,00,000
Inward supply of Input services	2.5%	2.5%	5,00,000
Inward supply of capital goods	9%	9%	25,00,000

Other information:

- (a) ITC in respect of all types of inward supply as given above was claimed in the relevant GSTR 3B and the same was also reflected in GSTR 2B.
- (b) All other conditions for claiming the refund are duly complied with.
- (c) No refund was claimed for the month of January 2023.

You are requested to compute the 'Maximum refund amount' eligible for inverted duty structure. Working notes should form part of your answer. **(5 Marks)**

- (b) Decide with reason whether e-way bill is required to be issued under CGST Act, 2017 in the following independent cases:
- A. SV Electricals Ltd., a registered supplier of electronic goods, is required to send from Delhi, a consignment of parts of LED TV to be replaced under warranty at various client locations in Gurugram (Haryana). The value of consignment declared in delivery challan accompanying the goods is ₹ 65,000. SV Electricals Ltd. claims that since movement of goods to Gurugram (Haryana) is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case. You are required to examine the technical veracity of the claim made by SV Electricals Ltd.

B. Tree Ltd. registered in Kerala, sends goods to its job worker Woods & Co. in Tamil Nadu, which is also registered under GST. Value of the consignment was ₹ 37,500 (including GST). **(4 Marks)**

- (c) The custom authorities of India noticed that there is an increase in the quantity of Solar PV Products imported into the country. So, on the recommendation of Director General (Specific Safeguard), the Central Government via Notification in Official Gazette imposed safeguard duty @25% on the import of Solar PV Products.

ABC Exports an importer in Bhuvneshwar imported Solar PV Products from Vietnam at landed price (exclusive of duties) of ₹ 30 lakh. Assume that IGST u/s 3(7) is 12%, BCD is 10% and SWS @10%. Determine the total duties payable under Customs Act. Ignore agriculture infrastructure and development cess.

Will it change your answer if ABC Exports is a SEZ unit? Explain discussing applicable provisions. **(5 Marks)**

Answer

(a)

Particulars				
In the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula:				
Maximum Refund Amount	(Turnover of inverted rated supply of goods and services)	Net ITC	- Tax payable on such inverted rated supply of goods and services	Net ITC
	= $\frac{\text{Adjusted Total Turnover}}{\text{Turnover}}$	x		x $\frac{\text{ITC availed on inputs and input services}}{\text{ITC availed on inputs and input services}}$
(i) Turnover of inverted rated supply of goods and services = 50,00,000 (product having rate less than 6% to be considered)				
(ii) Adjusted Total Turnover 50,00,000 + 50,000 = 50,50,000				
(iii) Net ITC: means ITC available only on Inputs 3500000 @ 12% = 4,20,000 ITC of Input service and Capital Goods not to be considered.				
(iv) Tax payable on such inverted rated supply of goods and services 2,50,000 [(50,00,000 × 5%)				
(v) ITC availed on inputs [(35,00,000×12%) = 4,20,000				

(vi) ITC availed on input services $[(5,00,000 \times 5\%)] = 25,000$	
'Maximum refund amount' eligible in the given case	$= \frac{50,00,000}{50,50,000} \times 4,20,000 - 2,50,000 \times \frac{4,20,000}{4,45,000}$
= ₹ 1,79,887 (rounded off) (Total under CGST and SGST)	
Or	
₹ 89,943.50+89,943.50 each (under CGST and SGST)	

- (b) A. The claim made by SV Electricals Ltd. is not correct. SV Electricals Ltd. needs to issue e-way bill.

E-way bill is mandatorily required to be issued whenever there is a movement of goods for reasons other than supply, provided the consignment value exceeds ₹ 50,000.

- B. In case of inter-State transfer of goods by principal to job-worker, e-way bill is mandatorily required to be issued irrespective of the value of the consignment.

Thus, e-way bill is required to be issued in case of transfer of goods by Tree Ltd. registered in Kerala to Woods & Co. in Tamil Nadu⁹.

- (c) **Computation of total duties payable under Customs Act**

Particular	Amount (₹)
Landed price of Solar PV Products	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Add: Safeguard duty @ 25% on ₹ 30,00,000	7,50,000
Add: Social welfare surcharge @ 10% on ₹ 3,00,000	<u>30,000</u>
Total	40,80,000
IGST (₹ 40,80,000 × 12%) [Value for calculation of IGST also includes safeguard duty amount.]	4,89,600
Total customs duty payable (₹ 3,00,000 + ₹ 7,50,000 + ₹ 30,000 + ₹ 4,89,600)	15,69,600

Safeguard measures are not applicable to articles imported by a SEZ unit unless specifically made applicable or article imported is cleared as such/ used in the manufacture of goods cleared into DTA.

⁹ It has been most logically assumed that the movement of goods has commenced from Kerala.

Thus, if ABC Exports is a SEZ unit, safeguard duty will not be applicable to it and total amount of duties payable will be ₹ 7,29,600. ¹⁰(3,00,000 BCD + 30,000 SWS + 3,99,600 IGST)

Question 5

- (a) *KK Pvt. Ltd. self-assessed its tax liability as ₹ 1,15,000 for the month of May 2022, but failed to make the payment.*

Subsequently the Department initiated penal proceedings against KK Pvt. Ltd. for recovery of penalty under Section 73 for failure to pay GST and issued show cause notice on 12th September 2022, which was received by KK Pvt. Ltd. on 17th September 2022.

KK Pvt. Ltd. deposited the tax along with interest on 27th September 2022 and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 57,500 (i.e. 50% of ₹ 1,15,000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief. (5 Marks)

- (b) *Mr. Raj intends to start a new manufacturing business in Jaipur. However, he is not able to determine the classification of the goods proposed to be manufactured and supplied by him since the classification of said goods has been contentious. Mr. Raj read an article about advance ruling in the newspaper and decided to apply for advance ruling so as to avoid litigation later.*

Mr. Rahul, who is friend of Mr. Raj is also engaged in the supply of goods similar to which Mr. Raj proposes to manufacture in Jaipur and Mr. Rahul advised him to apply the same classification as of his, since he has already taken advance ruling order regarding classification of the said goods.

Mr. Raj's tax consultant also agreed with the advice given by Mr. Rahul. Mr. Raj also thought it to be a good decision since he was unregistered and thought that he needed to be registered to apply for advance ruling in his name.

You are required to advise Mr. Raj with respect to following:

- (a) *Whether Mr. Raj and his tax consultant are right and can classify the goods proposed to be supplied by Mr. Raj on the basis of his friend Mr. Rahul's advance ruling order?*
- (b) *Whether Raj needs to get registered to apply for advance ruling? (4 Marks)*

¹⁰ It has been most logically assumed that article imported by ABC Exports is not cleared as such/ used in the manufacture of goods cleared into DTA.

- (c) Mr. Noddy, aged 40 years and a citizen of Australia, is on a solo trip to India for 1 month to meet his Indian friend residing in Mumbai. He carries with him following articles as part of baggage:

Particulars	Value in ₹
Used personal effects	80,000
Other articles carried on in person	1,00,000
65 cartridges of fire arms @ ₹ 1,000 per cartridge	65,000
150 gms of tobacco @ ₹ 10 per gram	1,500
Mobile phone	50,000
50 cigars of ₹ 100 each	5,000
Used personal effects of his infant child for donation	10,000

With reference to the Baggage rules 2016, indicate the taxability and taxable value in respect of each item in the table under baggage rules or otherwise. Also calculate the customs duty payable on baggage rounded off to the nearest rupee in accordance with law. Ignore agriculture infrastructure and development cess. **(5 Marks)**

Answer

- (a) The stand taken by the Department that he is liable to pay a penalty of ₹ 57,500 is not correct.

In the given case, since KK Pvt. Ltd. has not paid self-assessed tax for the month of May, 2022 within a period of 30 days from the due date of payment of such tax penalty payable will be higher of the following¹¹:

- (a) 10% of tax,

Or

- (b) ₹ 10,000

Hence in given case

₹ 11,500 (₹ 1,15,000 x 10%)

Or

₹ 10,000

i.e. ₹ 11,500 each under CGST and SGST

¹¹ Since the question requires answer with reference to the provisions of the CGST Act, it has been assumed that the tax liability provided in the question is also with respect to CGST only and accordingly amount of penalty payable has been computed.

- (b) (a) No, Mr. Raj and his tax consultant are not correct.

An advance ruling is binding only on the applicant who had sought it and on the concerned officer. An advance ruling is not applicable to similarly placed other taxable persons in the State.

Thus, Mr. Raj cannot classify the goods to be supplied by him on the basis of his friend Mr. Rahul's advance ruling order.

- (b) No, Mr. Raj need not register to apply for advance ruling since advance ruling can be sought by a registered person or person desirous of obtaining registration. It is not mandatory for a person seeking advance ruling to be registered.

- (c)

		Taxable value under Baggage Rules
Used personal effects	[Allowed duty free]	NIL
Other articles carried on in person	Taxable	1,00,000
50 cartridges of fire arms		50,000 (50 x ₹ 1,000)
125 gms of tobacco		1,250 (125 gm x ₹ 10)
Mobile phone		50,000
25 cigars of ₹ 100 each		2,500 (25 cigars x ₹ 100)
Used personal effects of his infant child	[Taxable.]	<u>10,000</u>
Total		2,13,750
Less: General Free Allowance		<u>15,000</u>
Baggage on which duty is payable @ 38.50% (including 10% Social welfare surcharge)		1,98,750
Duty payable on baggage¹²		76,519 (rounded off)

¹² Cartridges of fire arms exceeding 50, tobacco exceeding 125 gms and cigars exceeding 25 are not chargeable to rate of 38.50% as applicable to baggage vide *Notification No. 26/2016 Cus. dated 31.03.2016*. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Question 6

- (a) *M/s Blue Berry Traders, a registered person under GST, issued a tax invoice on 1st August, 2022 to M/s Blue Lagoon Traders without any underlying supply of goods or services amounting to Input Tax Credit (ITC) involved of ₹ 30 lakh.*

M/s Blue Lagoon Traders avails ITC on the basis of the said tax invoice. The department issued a show cause notice to M/s Blue Lagoon Traders on 1st April, 2023 specifying the amount of tax along with interest payable thereon u/s 50 and applicable penalty. M/s Blue Lagoon Traders paid the amount of tax along with interest payable thereon u/s 50 specified in the show cause notice on 15th April, 2023 and also along with applicable penalty.

Explain the relevant provision in brief and determine the amount of penalty to be paid by M/s Blue Berry Traders and M/s Blue Lagoon Traders under CGST Act, 2017 in respect of above referred transaction.

OR

Mr. Jumbo had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal came also in favour of the Department. Mr. Jumbo now wants to file an appeal against the decision of the Appellate Tribunal as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal. **(4 Marks)**

- (b) *What are the powers available to proper officers for scrutiny of returns under GST. The proper officer while conducting scrutiny of returns under Section 61 of the CGST Act, 2017, detected discrepancy in the return filed by M/s R Kumar Pvt. Ltd. (registered under GST). Explain the recourse that may be taken by the proper officer in case proper explanation is not furnished by M/s R Kumar Pvt. Ltd.* **(5 Marks)**
- (c) *Under which provisions of Constitution of India, government is empowered to levy taxes, custom duty and export duties. You are required to write a note on related provisions and restrictions under the Constitution of India.* **(5 Marks)**

Answer

- (a) Since M/s Blue Berry Traders issued an invoice without any supply of goods or services in violation of the provisions of GST law, it shall be liable to pay a penalty of higher of the following-
- (a) ₹ 10,000 or
 - (b) Amount of ITC passed on,
- So in given case, penalty is higher of:
- (a) ₹ 10,000, or

(b) ₹ 30 lakh

i.e. ₹ 30 lakh

each under CGST and SGST¹³

Where any person chargeable with tax due to wrongful availment and utilization of ITC by reason of fraud etc. pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded^{14 15}.

Thus, M/s Blue Lagoon Traders has to pay penalty of ₹ 7,50,000 (₹ 30 lakh x 25%) each under CGST and SGST¹⁶.

Alternative (a) Since the issue involved in Mr. Jumbo's appeal relates to the place of supply, the appeal in his case would have been decided by the

(i) National Bench of the Tribunal.

(ii) Regional Bench of the Tribunal.

An appeal against the decision of the National/Regional Bench lies directly to the Supreme Court.

Thus, in the given case Mr. Jumbo will have to file an appeal with the Supreme Court against the decision of the Appellate Tribunal.

- (b) The proper officer may 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.

In case no satisfactory explanation is furnished by registered person, the proper officer may take recourse to any of the following provisions, namely:

(a) proceed to conduct audit under section 65 of the CGST Act

(b) proceed to conduct special audit to be conducted by a Chartered Accountant or a Cost Accountant under section 66 of the CGST Act

¹³ Since the question requires the students to determine the penalty to be paid under the CGST Act, it has been assumed that the amount of ITC provided in the question is also with respect to CGST only and accordingly amount of penalty payable has been computed.

¹⁴ It has been most logically assumed that M/s Blue Lagoon Traders has availed ITC by reason of fraud or any willful- misstatement or suppression of facts.

¹⁵ Section 74 of the CGST Act, 2017

¹⁶ M/s Blue Lagoon Traders may be liable to pay a penalty of higher of ₹ 10,000 or amount of ITC passed on under section 122(1)(vii) of the CGST Act, 2017 read with Circular No. 171/03/2022 GST dated 06.07.2022. So in the given case, penalty is higher of: ₹ 10,000, or ₹ 30 lakh i.e. ₹ 30 lakh each under CGST and SGST Act.

- (c) undertake procedures of inspection, search and seizure under section 67 of the CGST Act.
- (d) initiate proceeding for determination of tax and other dues under section 73/74 of the CGST Act
- (c) Constitution¹⁷ provides that no tax shall be levied or collected except by authority of law.
Entry 83 of Union List or List I of Seventh Schedule to the Constitution has given the power to the Union to frame laws to levy duties of customs including export duties.
Constitution¹⁸ provides for restrictions as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows-
No law of a state shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-
 - (a) outside the State, or
 - (b) in the course of the import and/or export of the goods or services or both into and/or out of territory of Indiait solely lies with the Union, i.e. the Parliament of India.

¹⁷ Article 265 of the Constitution

¹⁸ Article 286 of the Constitution