

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 30th April, 2019 and (ii) Customs law as amended by the Finance Act, 2018 and significant notifications/circulars issued till 30th April, 2019.

Question 1

Sukhdev is a mining engineer. He has crossed the threshold limit for registration under the GST law and is duly registered in the State of Maharashtra. He effects the following transactions in the month of March, 2019 and wants you to compute the tax payable in cash. He has filed bond/ LUT to claim benefits from zero-rated supplies. The following are the particulars furnished by him.

Sl. No	Particulars	Value of supply in ₹
(a)	Sukhdev, being an operating member in mining and exploration services at Mumbai High, has provided certain services to the Joint Venture (JV) in which he is also a participant. He believes that the consideration received from the JV is 'Cost Petroleum' and not taxable.	12,00,000
(b)	He has purchased certain machinery from outside the State, to render services to the JV at Mumbai High.	6,00,000
(c)	He has obtained legal opinion from a local firm of advocates to enter into the contract with the JV, for providing services to it.	1,00,000
(d)	He has obtained accommodation from the State Government to locate his office close to the sea shore.	2,00,000
(e)	He gets a portion of the petroleum silt as part of the compensation while exploring the petroleum reserves in the Bombay High- which as per the contract with the Government is part of 'Cost Petroleum'.	6,00,000
(f)	He sells the petroleum silt to a SEZ Developer in Mumbai	6,80,000
(g)	Consideration is received towards transfer of tenancy rights, which according to Sukhdev is not liable to GST as it has suffered stamp duty.	8,00,000
(h)	On violation of the terms in production sharing agreement, Sukhdev has paid liquidated damages to the Government.	3,00,000

(i)	He has been assigned the right to collect royalty on behalf of Maharashtra Government, as 'Excess Royalty Collection Contractor'. He has noticed that the mining lease holders have short paid 2,00,000 as IGST from what had been exempted to him under the assignment.	--
(j)	He has sold self-fabricated machinery through his agent in Mumbai, that has been used for 2 years, the value of which is not available in the open market. The agent sells it immediately to an unrelated customer in Mumbai.	10,00,000
(k)	Opening Balance and brought forward tax credits are as follows:	
	- Electronic Cash Ledger - CGST	12,000
	- Electronic Credit Ledger - CGST	18,000
	- Electronic Credit Ledger - SGST	12,000
	- Electronic Credit Ledger - IGST	60,000
(l)	Supply value is exclusive of taxes. Supply of services are taxable at CGST 9%, SGST 9% and IGST 18% and supply of goods are taxable at CGST 2.5%, SGST 2.5% and IGST 5%. Determine the tax payable in cash. Provide suitable notes where required.	

(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.]	12,00,000	1,08,000	1,08,000	
(ii)	Compensation received in the form of petroleum silt, which, as per the	6,00,000	Nil	Nil	

	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.]				
(iii)	Sale of petroleum silt to a SEZ developer [Supply to SEZ developer is a zero-rated supply and no tax is payable on the same if made under a bond/LUT.]	6,80,000			Nil
(iv)	Consideration for transfer of tenancy rights [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.]	8,00,000	72,000	72,000	
(v)	Sale of self-fabricated machinery ¹ [Since open market value of the machine is not available, the value will be 90% of the price charged for the supply of machinery by the agent to his unrelated customer.] ²	9,00,000	22,500	22,500	
<i>Total tax liability on outward supplies</i>			2,02,500	2,02,500	
B.	GST liability on inward supplies under reverse charge				
(i)	Legal services provided by a firm of advocates to Sukhdev, i.e. a business entity ³	1,00,000	9,000	9,000	

¹ It has been assumed that the value of ₹ 10 lakh at which the agent sells the self-fabricated machinery to unrelated customer is known to Sukhdev at the time he sells the machinery to the agent.

² It has been assumed that the supplier has opted to value the goods at 90% of the value charged by the agent to the unrelated customer.

³ It has been assumed that aggregate turnover of Sukhdev in the preceding financial year exceeds ₹ 20 lakh.

(ii)	Renting of immovable property provided by the State Government to Sukhdev (a registered person)	2,00,000	18,000	18,000	
(iii)	Assignment, by the State Government, of the right to collect royalty from mining lease holders to the extent the exemption is not available				2,00,000
<i>Total tax liability on inward supplies under reverse charge</i>			27,000	27,000	2,00,000
C.	Input tax credit				
(i)	Opening balance		18,000	12,000	60,000
(ii)	Inter-State purchase of machinery	6,00,000			30,000
(iii)	Legal services	1,00,000	9,000	9,000	
(iv)	Renting of immovable property	2,00,000	18,000	18,000	
(v)	Assignment of right to collect royalty				2,00,000
<i>Total ITC</i>			45,000	39,000	2,90,000
[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.]					
D.	Computation of tax payable in cash				
	Total tax liability on outward supplies		2,02,500	2,02,500	
	Less: ITC of IGST		1,26,500	1,63,500	

	Less: ITC of CGST and SGST		45,000 (CGST)	39,000 (SGST)	
	Forward charge liability on outward supplies payable in cash after set off of ITC		31,000		
	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.]		27,000	27,000	2,00,000
	Total tax liability payable in cash [Since ₹12,000 (CGST) is available in Electronic Cash Ledger as opening balance, additional ₹ 46,000 (CGST) needs to be paid in cash.]		58,000	27,000	2,00,000
	Payment of liquidated damages to the Government [Services provided by the Government by way of tolerating non-performance of a contract for which consideration in the form of liquidated damages is payable to the Government under such contract, is exempt from GST. Hence, no tax will be payable by Sukhdev on such input service.]	3,00,000	Nil	Nil	

Note: In terms of section 49B of the CGST Act, 2017, full (100%) IGST credit of ₹ 2,90,000 must be utilised first before using CGST or SGST credit. However, the said IGST credit can be set off against the CGST and SGST liability in any order and in any proportion. Thus, the final answer in each case would vary.

Question 2

- (a) BODMAS Ltd., providing educational services, furnishes you with the following information for the various services provided by it for the month of March, 2019:

Particulars	₹
Receipts from running a Boarding School (including receipts for providing residential dwelling service of ₹ 14,00,000)	30,00,000

Receipts of 'Gyan Uday' - an Industrial Training Institute (ITI) affiliated to the National Council for Vocational Training (NCVT)	2,00,000
Receipts of 'Lakshya', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESOC) approved by the National Council for Vocational Training (NCVT)	1,00,000
Receipts of 'Wizard', a Commercial Coaching Institute providing commercial coaching in the field of arts and science (no certificate was issued on completion of the training)	80,000
Fees from prospective employers for campus interview	4,00,000
Renting of furnished flats for temporary stay to different persons	5,00,000
Receipts of 'Concepts', a Commercial coaching institute providing coaching in the field of commerce (a certificate was awarded to each trainee after completion of the training)	1,40,000
Receipts of Gurukul School providing education upto higher secondary	5,00,000

Compute the value of taxable supply assuming that all the above receipts are exclusive of GST. **(9 Marks)**

- (b) Mr. X has imported a machine from Japan in June, 2018 for ₹ 50 lakh. However, the machine was exported back in December, 2018 for repairs. The supplier has agreed to carry out the repairs as the machine was still in warranty period, which would normally take 6 months. The fair cost of the repairs will cost ₹10 lakh. In the meantime, Mr. X has requested the supplier to provide him another machine so that he can carry out his operations without hindrance. Acceding to the request, the supplier has provided him with another machine which was imported during February, 2019. The value of the new machine is ₹ 55 lakh. Freight charges incurred were ₹ 2 lakh. You are required to compute the assessable value and total duty payable for the above transaction of replacement.

Customs duty is 10% and IGST is 12%. Social Welfare Surcharge to be taken at 10%.

(5 Marks)

Answer

- (a) Services provided by an educational institution to its students, faculty and staff are exempt vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. Further, an educational institution means, *inter alia*, an institution providing services by way of-
- education up to higher secondary school or equivalent;
 - education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course.

In view of the aforesaid provisions, value of taxable supply of BODMAS Ltd. for the month of March, 2019 has been computed as follows:

Particulars	Amount (₹)
Receipts from Boarding School including receipts for residential dwelling service [Educational institution providing education up to higher secondary school or equivalent]	Exempt
Receipts of Gyan Uday [Educational institution running approved vocational education course (assuming that such courses are run in designated trades)]	Exempt
Receipts of Lakshya running Modular Employable Skill Course [Educational institution running approved vocational education course]	Exempt
Receipts of Wizard - a coaching institute [Taxable since coaching institute is not an educational institution]	80,000
Fees from prospective employers for campus interview [Taxable since such services are not specifically exempt]	4,00,000
Renting of furnished flats for temporary stay to different persons ⁴ [Not exempt since services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, are exempt only when the value of supply of a unit of accommodation is below ₹ 1,000 per day.]	5,00,000
Receipts of Concepts – a coaching institute [Taxable since coaching institute is not an educational institution]	1,40,000
Receipts of Gurukul School providing education upto higher secondary	Exempt
Value of taxable supply	11,20,000

(b) **Computation of assessable value and total duty payable**

Special provisions relating to payment of concessional duty in case of re-importation of goods exported for repairs are not applicable in the given case as the goods exported for repairs and the re-imported goods are not the same.

Therefore, full customs duty will be payable on the machine received as replacement.

⁴ It has been assumed that rent per flat per day \geq ₹ 1,000.

	Amount (₹)
Value of new machine (FOB) ⁵	55,00,000
Add: Freight charges ⁶	2,00,000
Insurance charges @ 1.125% of FOB [₹ 55,00,000 × 1.125%] [Insurance charges have been included @ 1.125% of FOB value since actual charges are not ascertainable]	<u>61,875</u>
Assessable Value	57,61,875
Add: Basic customs duty @ 10% of ₹ 57,61,875 (rounded off) (A)	5,76,188
Social welfare surcharge @ 10% of ₹ 5,76,188 (rounded off) (B)	<u>57,619</u>
Total	63,95,682
Add: Integrated tax @ 12% of ₹ 63,95,682 (rounded off) (C)	<u>7,67,482</u>
Total duty payable [(A) +(B) + (C)] (rounded off)	14,01,289

Question 3

- (a) Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the Financial Year (FY) 2018-19.

His turnover for FY 2018-19 is ₹ 80 lakh and is expected to achieve ₹ 130 lakh in FY 2019-20. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in FY 2019-20.

His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 01.04.2019 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his son Karan.

(5 Marks)

- (b) Surya Agencies has agreed to supply goods to customer's premises. Goods valued ₹ 80,000 are taxable @ 5% IGST as it is an inter-State supply. It also pays freight and transit insurance of ₹ 12,000. GTA is a registered entity and has charged GST (6% CGST and 6% SGST) under forward charge.

(i) Compute the invoice value of supply including IGST.

(ii) What will be the invoice value of supply including IGST, if the supply was under ex-factory basis instead of door-delivery basis? **(4 Marks)**

⁵ It has been most logically assumed that value of the machine is its FOB value.

⁶ It has been most logically assumed that freight charges pertain to transportation of goods from load port to port of importation.

- (c) During the year 2018, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported, into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons.

Also enumerate any exemptions/reliefs available from such duty. **(5 Marks)**

Answer

- (a) As per section 10 of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, *inter alia*, engaged in supply of goods and/or restaurant service.

However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons⁷, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in FY 2019-20 since its aggregate turnover in preceding FY (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is required to be obtained.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in FY 2019-20.

(b) Computation of invoice value of supply

- (i) **When supplier agrees to supply the goods at customer's premises, i.e. freight and transit insurance are paid by the supplier**, invoice value of supply will be computed as follows:

Particulars	Amount (₹)
Value of goods supplied	80,000
Add: Freight and transit insurance [Since the supplier has agreed to deliver the goods at the customer's premises and to pay for freight and insurance, the	12,000 ⁸

⁷ It has been assumed that M/s Rajbeer & Sons is a sole proprietorship.

⁸ Amount of freight and transit insurance (₹ 12,000) given in the question is assumed to be exclusive of 12% GST.

contract of supply becomes a composite supply, the principal supply being the supply of goods.]	
Total	92,000
Add: IGST @ 5% [Being a composite supply, GST at the rate applicable for principal supply will be charged]	4,600
Invoice value of supply	96,600

- (ii) **When supplier agrees to supply the goods on ex-factory basis, i.e. the buyer pays the freight and transit insurance, invoice value of supply will be computed as follows:**

Particulars	Amount (₹)
Value of goods supplied	80,000
Add: IGST @ 5% of ₹ 80,000	4,000
Invoice value of supply	84,000

Note: The above answer is based on the view that part (ii) of the question is an independent case and thus, the information provided in the first paragraph of the question regarding payment of freight and transit insurance by Surya Agencies does not apply to it. Moreover, when the contract is ex-factory, it implies that the freight and insurance will be the buyer's responsibility and seller will have no role, whatsoever, in delivering the goods to the customer's premises.

- (c) In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty.

Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with

less than 3% import share taken together \leq 9% of the total imports of that article into India.

- (c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable;
- (d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.
- (e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

Question 4

- (a) The following particulars are furnished by Delight Exporters, Karnataka, which is duly registered under the GST law. The entity has also filed bond/LUT in order to export goods without payment of any taxes. You are required to calculate the refund amount in respect of input tax credit on inputs and input services relating to goods exported in the relevant tax period.

Sl. No.	Particulars of supply	Value of supply in ₹
1.	Turnover - excluding supply of services, but includes exempt supplies of ₹ 8,00,000 and inward supplies of ₹ 2,00,000	76,00,000
2.	Zero-rated supply of goods under bond/LUT	12,00,000
3.	Export services under bond/LUT	48,00,000
4.	Non zero-rated supply of services	10,00,000
5.	Payments received towards zero-rated supply, which includes ₹ 12,00,000 against which services are yet to be supplied.	48,00,000
6.	Advance received in the past, against which zero-rated supplies have been made in the current tax period	14,00,000
7.	Turnover on which suppliers have claimed refund under rule 89(4A) and rule 89(4B) -Goods -Services	6,00,000 6,00,000
8.	ITC on inputs and input services during the tax period including those under rule 89(4A) and rule 89(4B)	12,00,000
9.	ITC relating to rule 89(4A) and rule 89(4B)	2,40,000

(5 Marks)

- (b) *Dharma Dutta has taken voluntary registration and has not opted for the composition scheme of levy. He is aggrieved by the cancellation of his registration under GST, although he is filing Nil returns, as he has not conducted any business for the past 8 months. He wants to know the circumstances under which the proper officer can cancel registration on his own. (4 Marks)*
- (c) *Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests customs authorities to determine value accordingly as per rule 8. The relevant data are*
1. *Cost of materials incurred by Mr. Q \$ 2000*
 2. *Fabrication charges incurred by Mr. Q \$ 1000*
 3. *Other chargeable expenses incurred by Mr. Q \$ 400*
 4. *Other indirect costs incurred by Mr. Q \$ 250*
 5. *Freight from Mr. Q 's factory to US port \$ 250*
 6. *Loading charges at US port \$ 100*
 7. *Normal net profit margin of Mr. Q is 20% of FOB*
 8. *Air freight from US port to Indian port \$ 1,500*
 9. *Insurance from US port to Indian port \$ 50*
 10. *Exchange rate ₹ 70 per \$*

The customs authorities are of the opinion that since value as per rule 7 can be determined at ₹ 4,00,000, there is no need to apply rule 8.

Can the request of Mr. X be legally acceptable? If so, compute the assessable value under the Customs Act, 1962. (5 Marks)

Answer

- (a) In case of zero-rated supply of goods and services without payment of tax under bond/LUT, refund of ITC relating to goods and services exported is granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

Accordingly, the amount of refund shall be computed as follows:

Particulars	₹
Net ITC excluding ITC availed for which refund is claimed under rule 89(4A) and 89(4B) (₹ 12,00,000 - ₹ 2,40,000)	9,60,000
Turnover of zero-rated supply of goods excluding turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)	6,00,000
Turnover of zero rated supply of services [Aggregate of payments received during the relevant period and services where supply has been completed for which payment had been received in advance in any prior period reduced by advances received for which the supply of services has not been completed during the relevant period] [₹ 48 lakh + 14 lakh - ₹ 12 lakh] ⁹	50,00,000
Adjusted total turnover = Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined as above + Non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies + Turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)] [₹ 76 lakh - ₹ 2 lakh + ₹ 50 lakh + ₹ 10 lakh – (₹ 8 lakh ¹⁰ + ₹ 6 lakh + ₹ 6 lakh)]	1,14,00,000
Refund of ITC for zero rated supply of goods and zero rated supply of services [₹ 9,60,000 x (₹ 56,00,000/ ₹ 1,14,00,000)]	4,71,579 (rounded off)

Note: The above answer is based on the following assumptions made with regard to the information given in the table in the question:

- (i) Turnover at Sl. No. 1 [₹ 76 lakh] includes the turnover of zero rated supply of goods given at Sl. No. 2 [₹ 12 lakh].
- (ii) Turnover of zero rated supply of goods given at Sl No. 2 [₹ 12 lakh] includes turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89(4B) [₹ 6 lakh]

⁹ It is assumed that Sl. No. 6. of the table in the question belongs to zero rated supply of service and not for zero rated supply of goods.

¹⁰ The exempt supplies are logically assumed to be other than zero rated supplies.

- (ii) Turnover of zero rated supply of services computed as per rule 89(4)(D) [₹ 50 lakh] includes the turnover of supplies of services in respect of which the refund is claimed under rule 89(4A) and 89(4B) [₹ 6 lakh].

However, the above question can also be answered on the basis of alternate assumptions e.g., the turnover of zero rated supply of goods given at Sl. No. 2 [₹ 12 lakh] excludes turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89(4B) [₹ 6 lakh] or the turnover at Sl. No. 1 [₹ 76 lakh] does not include the turnover of zero rated supply of goods given at Sl. No. 2 [₹ 12 lakh] and turnover of supplies of goods in respect of which refund has been claimed under rule 89(4A) and 89 (4B) [₹ 6 lakh].

- (b) GST registration may be cancelled *suo motu* by GST Officer if the registered person: -
- (i) does not conduct any business from the place of business
 - (ii) violates the anti-profiteering provisions
 - (iii) issues invoice/bill without supply of goods / services
 - (iv) does not file his GST return for six months
 - (v) does not file his GST return consecutive tax periods if he has opted for composition levy
 - (v) has not commenced business within 6 months from date of registration
 - (vi) has obtained the registration by means of fraud, wilful misstatement or suppression of facts.

Note: Any four points may be mentioned.

- (c) The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Mr. X for determination of value under rule 8 is legally acceptable if the same is also approved by the proper officer.

Assuming that the request of Mr. X has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses
- (c) the cost or value of all other expenses under rule 10(2) of the said rules.

Computation of assessable value	
Particulars	Amount (\$)
Cost of materials	2,000

Add: Fabrication charges	1,000
Other chargeable expenses	400
Other indirect costs	<u>250</u>
Cost of the goods at Mr. Q's factory	3,650
Add: Net profit margin @ 20% of FOB, i.e. 25% of total cost Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$ 4,000 [\$ 3,650 + \$ 250 + \$ 100] FOB value = Total cost till port + profit = \$ 5,000 (\$ 4,000 + \$ 1,000)	1,000
Add: Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	1,000
Insurance charges	<u>50</u>
Assessable value	5,700
	₹
Assessable value in Indian Rupees (Exchange rate - Rs 70 per \$)	3,99,000

Question 5

- (a) A taxpayer has suppressed certain facts resulting in short payment of tax. The mistake is pointed out by the Department, but no show cause notice (SCN) has been issued. As per the taxpayer, suppression is accepted at ₹ 12,00,000 and he agrees that the suppression has taken place in the month of January, 2019. He clears the dues on 20th April, 2019. However, the Department, on verification, identifies additional suppression of ₹ 2,00,000 in the same month of January, 2019. SCN is issued and the taxpayer represents before the proper officer, which results into an adverse order against the taxpayer. The order is passed on 25.05.2019 and the taxpayer complies with the adverse adjudication order on 27.06.2019.

Determine the tax, interest and penalty payable at each stage.

(5 Marks)

- (b) Ganesh Enterprises, a registered supplier under the GST law, has committed an offence that is compoundable. The Department has instituted prosecution against the proprietor of Ganesh Enterprises and he is of the opinion that he shall not be able to apply for compounding of the offence as the prosecution has been launched. He seeks your advice whether he has the opportunity to apply for compounding of the offence and the consequences arising therefrom.
- (4 Marks)**
- (c) Mrs. X, an Indian resident who was on a visit to China, returned after months. She was carrying with her the following items:

(i)	Personal effects	₹ 75,000
(ii)	Laptop computer	₹ 60,000
(iii)	Jewellery - 25 grams (purchased in China)	₹ 75,000
(iv)	Music system	₹ 50,000

Compute the customs duty payable by Mrs. X with reference to the Baggage Rules, 2016.

(5 Marks)

Answer

- (a) *Note: In the given question, suppression accepted at ₹ 12 lakh may be assumed to be either the value or the tax amount. Further, where the amount of ₹ 12 lakh is assumed to be the value of suppression, rate for tax payable would also need to be assumed.*

Further, as per explanation 2 to section 74 of the CGST Act, 2017, the expression “suppression” means non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Therefore, the question can be answered either by assuming that the information has been suppressed in the return/statement/report filed IN the month of January (interest would become payable from 21st January in this case) or by assuming that suppression activity has taken place in January and the same has been reported in the return/statement/report filed IN the month of February (interest would become payable from 21st February in this case).

In view of the above assumptions, following alternative answers are possible:

Alternative 1- Where amount of ₹ 12 lakh is assumed to be the value of suppression and tax rate assumed to be 18%¹¹

Tax, interest and penalty payable before the issue of the SCN: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Value suppressed = ₹ 12,00,000

Tax @ 18% = ₹ 2,16,000

Interest = ₹ 2,16,000 × 18% × 90/365 = ₹ 9,587 (rounded off) [From 21st January to 20th April]¹²

¹¹ Any other tax rate may also be assumed. Answer will change accordingly.

¹² It has been assumed that the information has been suppressed in the return/statement/report filed in the month of January and thus, interest would become payable from 21st January in this case.

OR

Interest = ₹ 2,16,000 × 18% × 59/365 = ₹ 6,285 (rounded off) [From 21st February to 20th April]¹³

Penalty = ₹ 2,16,000 × 15% = ₹ 32,400

Tax, interest and penalty payable after the adjudication order: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest after 30 days of communication of the adjudication order penalty equal to 100% of such tax is payable.

Value suppressed = ₹ 2,00,000

Tax @ 18% = ₹ 36,000

Interest = ₹ 36,000 × 18% × 158/365 = ₹ 2,805 (rounded off) [From 21st January to 27th June]¹⁴

OR

Interest = ₹ 36,000 × 18% × 127/365 = ₹ 2,255 (rounded off) [From 21st February to 27th June]¹⁵

Penalty = ₹ 36,000 × 100% = 36,000

Alternative 2- Where amount of ₹ 12 lakh is assumed to be the suppressed amount of tax

Tax, interest and penalty payable before the issue of the SCN: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest before the issuance of show cause notice, penalty equal to 15% of such tax is payable.

Tax payable = ₹ 12,00,000

Interest = ₹ 12,00,000 × 18% × 90/365 = ₹ 53,260 (rounded off) [From 21st January to 20th April]¹⁶

¹³ It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.

¹⁴ It has been assumed that the information has been suppressed in the return/statement/report filed in the month of January and thus, interest would become payable from 21st January in this case.

¹⁵ It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.

¹⁶ It has been assumed that the information has been suppressed in the return/statement/report filed in the month of January and thus, interest would become payable from 21st January in this case.

OR

Interest = ₹ 12,00,000 × 18% × 59/365 = ₹ 34,915 (rounded off) [From 21st February to 20th April]¹⁷

Penalty = ₹ 12,00,000 × 15% = ₹ 1,80,000

Tax, interest and penalty payable after the adjudication order: In case of short payment of tax by reason of suppression of facts, if the taxpayer pays such short-paid tax and applicable interest after 30 days of communication of the adjudication order penalty equal to 100% of such tax is payable.

Tax payable = ₹ 2,00,000

Interest = ₹ 2,00,000 × 18% × 158/365 = ₹ 15,584 (rounded off) [From 21st January to 27th June]¹⁸

OR

Interest = ₹ 2,00,000 × 18% × 127/365 = ₹ 12,526 (rounded off) [From 21st February to 27th June]¹⁹

Penalty = ₹ 2,00,000

- (b) A person accused of an offence is permitted to make an application for compounding of an offence even after the institution of prosecution against him.

Therefore, in the given case, Ganesh Enterprises can apply for compounding of offence even though prosecution has been instituted/launched against him.

On payment of compounding amount determined by the Commissioner, the criminal proceedings which have been initiated against Ganesh Enterprises in respect of the said offence, shall stand abated.

The lower limit for compounding amount is to be the greater of the following amounts: -

- 50% of tax involved, or
- ₹ 10,000.

The upper limit for compounding amount is to be greater of the following amounts: -

¹⁷ It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.

¹⁸ It has been assumed that the information has been suppressed in the return/statement/report filed in the month of January and thus, interest would become payable from 21st January in this case.

¹⁹ It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.

- 150% of tax involved or
- ₹ 30,000.

(c) **Computation of customs duty payable by Mrs. X**

Particulars	₹
Personal effects [Duty free clearance is allowed]	Nil
Laptop computer [One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	Nil
Jewellery [Duty free jewellery allowance is not available to Mrs. X since she did not reside abroad for more than 1 year]	75,000
Music system	<u>50,000</u>
Total value	1,25,000
Less: General duty free baggage allowance of ₹ 50,000	<u>50,000</u>
Value of baggage liable to customs duty	75,000
Rate of Duty	38.50%
Customs duty @ 38.50% (including social welfare surcharge)	28,875

Question 6

- (a) Mr. Pankaj, an unregistered person under GST, purchases the goods supplied by Mr. Raman, who is a registered person without receiving a tax invoice from Mr. Raman and thus helps in tax evasion by Mr. Raman. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom? **(4 Marks)**
- (b) Neurological Systems Private Limited has been subject to confiscation of goods on the ground that it has not accounted for the goods that are liable to tax under the CGST Act, 2017. The directors would like to know from you as to how such goods are to be released from the Department. You are required to advise the directors regarding the provisions of law on this matter. **(5 Marks)**

OR

Enumerate any five matters on which the GST Council may make recommendations under Article 279A of the Constitution of India.

- (c) M/s PQR has imported used wearing apparel from USA in April 2019. After receipt, PQR is doubtful that the apparel may not be saleable in India and want to re-export back to USA, without use, which the supplier has accepted. Will PQR be eligible to take drawback of duty paid on imports? Also, list out the conditions for duty drawback. **(5 Marks)**

Answer

- (a) Supply of goods without issue of any invoice with regard to such supply by a taxable person and the act of aiding or abetting said offence by any person are punishable with penalty and imprisonment.

Penalty would be as follows:

Since Mr. Raman – a taxable person - has supplied goods without invoice, he is punishable with:

Penalty: higher of

- (a) ₹ 10,000/- or
- (b) 100% of tax evaded

Since Mr. Pankaj helped in tax evasion by Mr. Raman, he is punishable with:

Penalty: up to ₹ 25,000/-

Imprisonment would be as follows:

In case of first time offence, where

- (a) tax evaded > ₹ 5 crore, imprisonment upto 5 years and fine
- (b) Exceeds ₹ 2 crore tax evaded ≤ ₹ 5 crore, imprisonment upto 3 years and fine
- (c) Exceeds ₹ 1 crore tax evaded ≤ ₹ 2 crore, imprisonment upto 1 years and fine

In case of subsequent offence, imprisonment up to 5 years and fine

- (b) To get the confiscated goods released from the Department, the directors of Neurological Systems Private Limited are advised as under:-

Neurological Systems Private Limited shall get an option to pay redemption fine in lieu of confiscation.

Such fine should be less than or equal to ≤ [Market value of the goods confiscated – Tax chargeable thereon]

Aggregate of such fine and penalty leviable should be more than or equal to ≥ Amount of penalty leviable under section 129(1) of the CGST Act, 2017.

Neurological Systems Private Limited can get its confiscated goods released on payment of such redemption fine plus the tax, penalty and charges payable in respect of such goods.

(b) Alternative

The matters on which the GST Council may make recommendations under Article 279A of the Constitution of India are as under:-

- (i) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in GST;

- (ii) the goods and services that may be subjected to, or exempted from GST;
- (iii) model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce and the principles governing the place of supply;
- (iv) the threshold limit of turnover below which goods and services may be exempted from GST;
- (v) the rates including floor rates with bands of GST;
- (vi) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (vii) special provision with respect to Special Category States
- (viii) the date on which the GST be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (ix) any other matter relating to the GST, as the Council may decide.

Note: Any five points may be mentioned.

- (c) Duty drawback is allowed on re-export of imported wearing apparels only when the same has not been used after import.

Since M/s. PQR has re-exported the imported apparels without using the same, it is eligible to take drawback of duty paid on import of apparels provided the following conditions are satisfied:

- (a) goods (apparels) are identified to the satisfaction of the proper officer as the goods which were imported and
- (b) the goods are entered for export within 2 years [period extendible on sufficient cause being shown]

from the date of payment of duty on import.