INDIRECT TAX LAWS AND PRACTICE

GROUP - IV
PAPER - XVIII

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)
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INDIRECT TAX LAWS
AND PRACTICE

FINAL

GROUP – IV

PAPER – 18

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Preface

Professional education systems around the world are experiencing great change brought about by the global demand. Towards this end, we feel, it is our duty to make our students fully aware about their curriculum and to make them more efficient.

Although it might be easy to think of the habits as a set of behaviours that we want students to have so that we can get on with the curriculum that we need to cover. It becomes apparent that we need to provide specific opportunities for students to practice the habits. Habits are formed only through continuous practice. To practice the habits, our curriculum, instruction and assessments must provide generative, rich, and provocative opportunities for using them.

The main purpose of this volume is to disseminate knowledge and motivate our students to perform better, as we are overwhelmed by their response after publication of the earlier editions. Thus, we are delighted to inform our students about the **e-distribution of the fourth edition of our 'Work book'**.

This book has been written to meet the needs of students as it offers the practising format that will appeal to the students to read smoothly. Each chapter includes unique features to aid in developing a deeper understanding of the chapter contents for the readers. The unique features provide a consistent reading path throughout the book, making readers more efficient to reach their goal.

Discussing each chapter with illustrations integrate the key components of the subjects. In the fourth edition, we have expanded the coverage in some areas and condensed others.

It is our hope and expectation that this fourth edition of work book will provide further an effective learning experience to the students like the earlier editions.

The Directorate of Studies,

The Institute of Cost Accountants of India

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INDEX

Sl. No.	GOOD AND SERVICES TAX (GST)	Page No.
1	Study Note – 1, 2 & 3 Introduction, Levy and Collection of Tax, Classification of Goods & Services under GST	1 – 19
2	Study Note – 4, 5 & 6 Time of Supply under GST, Value of Supply under GST, Place of Supply under GST	20 – 36
3	Study Note – 7, 8 & 9 Input Tax Credit (ITC), Registration under GST, Tax Invoice, Credit and Debit Notes and Other Document under GST	37 – 51
4	Study Note – 10, 11 & 12 Accounts and Records under GST, Payment of Tax, TDS & TCS under GST	52 – 59
5	Study Note – 13, 14 & 15 Returns under GST, Matching Concept under GST, Export, Imports and Refund under GST	60 – 70
6	Study Note – 16, 17 & 18 Assessment, Inspection, Search & Seizure, Audit under GST, Goods and Service Tax (Compensation to State) Act, 2017	71 – 79
7	Study Note – 19, 20 & 21 Advance Concept under GST, Job Work under GST, E-Way Bills under GST	80 – 90
8	Study Note – 22, 23, 24 & 25 Transitional Provisions, Anti-Profiteering, Replying to Department Notice under GST, Operation of GST Portal	91 – 96

	CUSTOMS LAW	
9	Study Note – 1, 2 & 3 Customs Law – Basic Concepts, Classification under Customs, Types of Duties	97 – 105
10	Study Note – 4, 5 & 6 Valuation under Customs, Import and Export Procedure, Warehousing	106 – 114
11	Study Note – 7, 8 & 9 Duty Drawback, Baggage and Postal Articles, Administrative and Other Aspect	115 – 123
12	Study Note – 10, 11 & 12 Customs (Import of Goods at concessional Rate of Duty) Rules, 2017, Search, Seizure, Confiscation and Miscellaneous provisions, Comprehensive Issues under Customs	124 - 132
	FOREIGN TRADE POLICY	
13	Foreign Trade Policy – Foreign Trade Policy 2015 - 2020	133 - 138

Suggested Marks Distribution from Examination Point of View

Only for Practice Purpose

Total 100 Marks	3 Hours	MCQ = 20 Marks
		Others = 80 Marks

Objective Question

20 Marks (2 Marks each questions)	MCQ	1 mark for correct answer
		1 mark for justification

Short Notes / Case Study

Minimum Marks for each Questions	3 Marks
Maximum Marks for each Questions	10 Marks

Practical Problem

Minimum Marks for each Questions	4 Marks
Maximum Marks for each Questions	16 Marks

GOODS & SERVICES TAX (GST)

Study Note – 1, 2 & 3

INTRODUCTION,
LEVY AND COLLECTION OF TAX,
CLASSIFICATION OF GOODS AND SERVICES UNDER GST –
Reading the Rate Schedule

Learning Objective:

- ***GST is levied on supply. The goal of the study note is to learn basic concepts of GST and to understand the concept of supply. This also covers method of classification of goods and services.***

1. Choose the correct alternative and also provide your justification:

i. GST is a:

a. Destination base tax
b. Source base tax
c. Person base tax
d. State base tax

Reason:
GST is a destination base consumption tax.

ii. One of the following products is out of GST –

a. **Natural Gas**
b. Milk
c. Medicine
d. All of the above

Reason:
Petroleum products, natural gas and aviation turbine fuel are out of GST.

iii. The activities to be treated as supply of goods or supply of services are referred to in –

a. Schedule I
b. Schedule II
c. Schedule III
d. None of the above

Reason :
As per sec. 7, the activities to be treated as supply of goods or supply of services are referred to in Schedule II

iv. Gifts not exceeding _____in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

a. ₹ 50,000
b. ₹ 1,00,000
c. ₹ 75,000
d. ₹ 5,000

Reason:
As per Schedule I, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

v. "Composite supply" means:

a. a supply made by any person to a recipient consisting of two or more supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other;
b. a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
c. two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price
d. None of the above

Reason:
As per sec. 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or m ore taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

vi. "Mixed supply" means:

a. a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
b. two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply
c. two or more individual supplies of goods, made in conjunction with each other by any person for a single price where such supply does not constitute a composite supply
d. None of the above

Reason :
As per sec. 2(74), mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

vii. Out of the following transactions, identify which of them is composite supply:

a. **Goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance;**

b. Supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price

c. Both of the above

d. None of the above

Reason :

Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply.

Viii. What are the taxes levied on an intra -State Supply?

a. IGST

b. CGST

c. SGST

d. CGST and SGST

Reason :

In case of intra -State supply, CGST is payable to the Central Government and SGST is payable to the State Government.

ix. What is the maximum GST rate presently levied on any product or service (combinedly – CGST +SGST)?

a. 30%

b. 28%

c. 18%

d. 32%

Reason :

The maximum rate of GST is 28%.

x. Services by an employee to the employer in the course of or in relation to his employment is –

a. Supply of goods

b. Supply of service

c. Neither a supply of goods nor supply of service

d. None of the above

Reason :

As per sec. 7 read with Schedule III, services by an employee to the employer in the course of or in relation to his employment is neither supply of goods nor supply of service.

xi. Services of funeral, burial, crematorium or mortuary including transportation of the deceased is:

a. Supply of goods
b. Supply of service
c. Neither a supply of goods nor supply of service
d. None of the above

Reason :

As per sec. 7 read with Schedule III, Services of funeral, burial, crematorium or mortuary including transportation of the deceased is neither supply of goods nor supply of service

xii. Renting of immovable property is:

a. Supply of goods
b. Supply of service
c. Neither a supply of goods nor supply of service
d. None of the above

Reason :

As per sec. 7 read with Schedule II, renting of immovable property is supply of service.

xiii. Any treatment or process which is applied to another person's goods is:

a. Supply of goods
b. Supply of service
c. Neither a supply of goods nor supply of service
d. None of the above

Reason :

As per sec. 7 read with Schedule II, any treatment or process which is applied to another person's goods is supply of service.

xiv. Which of the following persons can opt for composition scheme?

a. Person making any supply of goods which are not leviable to tax under this Act;
b. Person making any inter -State outward supplies of goods;
c. Person effecting supply of goods through an e-commerce operator liable to collect tax at source
d. None of the above

Reason :

As per sec. 10, registered person shall be eligible to opt for composition scheme provided:

1. he is not engaged in the supply of services other than few specified supplies;
2. he is not engaged in making any supply of goods which are not leviable to tax under this Act;
3. he is not engaged in making any inter -State outward supplies of goods;
4. he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
5. he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

xv. What is the rate applicable under CGST to a restaurant service provider opting to taxes under composition scheme?

a. 0.5%
b. 1%
c. 2.5%
d. None of the above

Reason :
As per sec. 10, a restaurant service provider opting to taxes under composition scheme is liable to pay CGST @ 2.5%

xvi. Can a registered person opt forcomposition scheme only for one out of his 4 business verticals having same Permanent Account Number?

a. Yes
b. No
c. Yes, subject to prior approval of the Central Government
d. Yes, subject to prior approval of the concerned State Government

Reason :
No, Composition scheme is levied for all business verticals with the same PAN. A taxable person will not have the option to select composition scheme for one, opt to pay taxes as per regular provision for other.

xvii. Which of the following will be excluded from the computation of 'aggregate turnover'?

a. Value of Taxable supplies
b. Value of Exempt Supplies
c. Non-taxable supplies
d. **Value of inward supplies on which tax is paid on reverse charge basis**

Reason :
As per sec. 2(6), "aggregate turnover" means the aggregate value of all taxable supplies(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Perm anent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

xviii. Silk yarn procured by A Ltd. from a trader, GST is payable by:

a. **A Ltd.**
b. Trader
c. Both of the above i.e., joint charge (50% of the tax shall be paid by each of them)
d. None of the above

Reason :
As per sec. 9(3), in case of procurement of silk yarn, reverse charge is applicable. Thus, A Ltd. is liable to pay GST.

xix. When can credit for tax paid under reverse charge mechanism be taken?

a. **Same month in which payment of tax has been made**
b. Same month in which liability of tax has occurred
c. Either of the above
d. No credit is available

Reason :
ITC will be available in the month in which the tax under reverse charge has been paid.

xx. Import of services without consideration by a taxable person from a related person or from any other establishment outside India is a taxable supply

a. True
b. False

Reason:
Schedule I specifies this activity as a taxable supply

xxi. Which Schedule specifies that job work is a supply of service

a. Schedule I
b. Schedule II
c. Schedule III

Reason:
Serial number 3 of Schedule II provides this

xxii. Works Contra ct is a supply of ……

a. Goods
b. Services
c. Composite
d. None

Reason:
Schedule II specifies works contracts as supply of service

xxiii. Supply of services by Head Office of a company to its Branch offices located in different states would be taxable under the GST Act because of:

a. Schedule II
b. Schedule I
c. Schedule III
d. None of the above

Reason:
Serial no 2 of Schedule I of the CGST provides supply of goods and services between distinct persons would be a taxable supply.

xxiv. An agreement for an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act would be a supply of:

a. Goods
b. Service
c. Neither supply of goods or services
d. None of the above

Reason:
Schedule II of the CGST provides this

xxv. A restaurant serves alcoholic liquor to its customers along with food. What will be the tax rate on supply of alcoholic liquor?

a. 28%
b. 18%
c. Not taxable
d. Exempt from GST

Reason:
As per definition given in article 366(12A), GST covers all the goods except alcoholic liquor for human consumption. It means no GST can be levied on Alcoholic liquor for human consumption.

xxvi. The definition of exempt supply does not include the following:

a. Supplies attracting nil rate of tax
b. Supplies wholly exempt from tax
c. Supplies attracting tax rate of zero
d. Non- Taxable Supply

Reason:
Zero is a rate and hence will be a taxable supply

xxvii. Services imported by SEZ developer or unit are regarded as :

a. **Exempted services**
b. Taxable services

Reason:
All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorized operations are exempted from the whole of the integrated tax leviable thereon under sec 3(7) of Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [As per Notification No. 18/2017 - Integrated Tax (Rate) date 5th July 20 17]

xxviii. Supplies to or by a SEZ unit or developer is an:

a. **Inter state supply**
b. Intra state supply

Reason:
Section 7(5)(b) of the IGST specifies the above.

xxix. Services imported into India is regarded as:

a. **Inter State supply**

b. Intra state supply

Reason:

As per Section 7(4) of the IGST Act.

2. (a) What are the functions of GSTN?

Answer:

The functions of the GSTN, inter alia, include:

- facilitating registration;
- forwarding the returns to Central and State authorities;
- computation and settlement of IGST;
- matching of payment of tax with banking network
- providing tax payers profile
- providing various MIS reports to Central and State Governments based on taxpayers information provided through returns

(b) Define person as per GST law?

Answer:

As per sec. 2(84), 'person' includes —

a. an individual;
b. a Hindu Undivided Family;
c. a company;
d. a firm;
e. a Limited Liability Partnership;
f. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
g. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in sec. 2(45) of the Companies Act, 2013;
h. anybody corporate incorporated by or under the laws of a country outside India;
i. a co-operative society registered under any law relating to co-operative societies;
j. a loc al authority;
k. Central Government or a State Government;
l. society as defined under the Societies Registration Act, 1860;
m. trust; and
n. every artificial juridical person, not falling within any of the above

3. (a) Comment on the followings:

(i) Where services of an architect from outside India are taken by a person for the construction of his residential property in India. Is it considered as supply for the purpose of GST?

(ii) Will a not- for-profit entity be liable to tax (if registered under GST) on any supplies effected by it – e.g.: sale of assets received as donation?

Answer:

(i) Where services of an architect from outside India are taken by a person for the construction of his residential property in India, then although the person in India is not obtaining these services in the course or furtherance of business in India but for his personal purposes, the import of service is covered by the definition of supply and hence taxable.

(ii) Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

(b) Which taxes at the Centre and State level were subsumed into GST?

Answer:

At the Central level, the following taxes are being subsumed:

- Central excise duty (Cenvat)
- Additional duties of excise
- Excise Duty under Medicinal and Toilet Preparation Act
- Service Tax
- Additional Customs Duty (CVD)
- Special Additional Duty of Customs (SAD)
- Centra l Surcharge and Cess

At the State level, the following taxes are being subsumed:

- State VAT/Sales Tax
- Central Sales Tax [levied by Centre but collected by State]
- Octroi and Entry Tax
- Luxury Tax
- Taxes on Lottery, Betting and Gambling
- State Surcharge and Cess

4. (a) ABC ltd. has provided following information for the month of Sep, 2018:

- **Intra-State outward supply ₹ 8,00,000/-**
- **Inter -State exempt outward supply ₹ 5,00,000/ -**
- **Turnover of exported goods ₹ 10,00,000/-**
- **Payment made to GTA ₹ 80,000/ - Calculate the aggregate turnover of ABC Ltd.**

Answer:

Computation of aggregate turnover

Particulars	Amount
Intra -State outward supply	**8,00,000**
Inter-State exempt outward supply	**5,00,000**
Turnover of exported goods	**10,00,000**
Payment made to GTA	**---**
Aggregate Turnover	23,00,000

(b) Whether CGST & SGST/UTGST is applicable on import of goods or service or both?

Answer:

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 (IGST) shall apply on import of goods or services or both.

5. Comment on the following:

a. Whether supply of laptop and a carry case would constitute a composite supply?
b. Whether supply of repair services of laptop with parts would constitute a composite supply?
c. Which HSN code is to be used in case of composite supplies?
d. Which HSN code is to be used in case of mixed supplies?

Answer:

a. In this case, the carry case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier establishes that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.

b. As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is known to the customer is the 'repair service' which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service.

c. As per sec. 8(a), in case of composite supplies, the HSN code of the principal supply is to be used.

d. As per sec. 8(b), in case of mixed supplies, the HSN of the supply that attracts the highest rate of tax is to be used.

6. Kalpana Trust, an entity registered under section 12AA of the Income- tax Act, 1961, has furnished you the following details with respect to the activities undertaken by it. You are required to compute its tax liability from the information given below:

Particulars	₹
Amount received for the Yoga camps organized for elderly people	**3,80,000**
Payment made for the services received from a service provider located in US, for the purposes of providing 'charitable activities'	**4,60,000**
Amount received for counseling of mentally disabled persons	**2,50,000**
Amount received for renting of commercial property owned by the trust	**2,50,000**
Amount received for activities relating to preservation of forests and wildlife	**8,20,000**

Note: Applicable CGST 9% and SGST 9% have been charged separately wherever applicable. Kalpana Trust is not eligible for composition levy.

Answer:

Particulars	₹
Amount received for the Yoga camps organized for elderly people	Exempted supply
Payment made for the services received from a service provider located in US, for the purposes of providing 'charitable activities'	Exempted supply
Amount received for counseling of mentally disabled persons	Exempted supply
Amount received for renting of commercial property owned by the trust	2,50,000
Amount received for activities relating to preservation of forests and wildlife	Exempted supply
CGST 9% x 2 ,50,000	22,500
SGST 9% x 2,50,000	22,500
Total GST liability	45,000

7. Write brief note on composition scheme.

Answer:

Composition scheme is an optional scheme available to a taxable person. This scheme is available for a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore.

However, a reduced limit of ₹ 75 lakhs has been k ept for Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand.

The eligible persons and rates of tax under composition scheme is as follows:

S. No.	Category of registered persons	Rate of tax (As per Rule 7 of Chapter II of CGST Rules, 2017)	Rate of tax (As per SGST Rules)	Effective rate of tax
1.	Manufacturers, other than manufacturers of such goods as may be notified by the Government.	0.5%	0.5%	1%
2.	Restaurant services and outdoor catering services	2.5%	2.5%	5%
3.	Any other supplier eligible for composition levy under Section 10 and the provisions of this chapter	0.50%	0.50%	1%

Condition & Restrictions to opt for Composition Scheme [Section 10(2)]

(a) The scheme is not available for services sector, except restaurants.
(b) Supplier of goods which are not taxable under the GST is not eligible to register under this scheme.
(c) Tax payers making inter -state supplies is not eligible for composition scheme
(d) Tax payer making supplies through ecommerce operators who are required to collect tax at source shall not be eligible for composition scheme
(e) The dealer is neither casual taxable persons nor non-resident taxable persons.
(f) Tax Payer who is not a manufacturer of such goods as may be notified by the Government on the recommendation of the council is also not eligible for composition scheme

Restrictions:

- A registered person under composition scheme is not permitted to collect tax and neither he will be eligible for any input tax credit.
- A Composition dealer cannot claim input tax credit for goods or services.
- The composition scheme is optional and the option availed of by a registered person under section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the specified limit.
- A person under composition scheme shall issue a bill of supply and cannot charge tax from recipients of goods or services.
- The dealer under composition scheme shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.
- Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN. That means, if a taxable person has multiple business verticals and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for selected verticals only.

Rate of tax in case of composition levy with supply of service-Notification No. 03/2019 CT dated 29-01-2019
Now a supplier opting for composition scheme has also been permitted to supply services other than restaurant services, with effect from 01-02-2019, tax rate being ½% of turnover of taxable supplies of goods and services in the State or Union territory shall be applicable.

8. (a) Discuss the general rule of interpretation for classification.

Answer:

Where the description read with section or Chapter notes is not enough to correctly classify the goods, then general rules of interpretation have to follow. The principles governing the appropriate classification of goods under the Tariff, as set out in the 'General Rules for Interpretation of this Schedule' to the Customs Tariff are as under.

- Rule 1: Headings are for reference only and do not have statutory force for classification
- Rule 2(a): Reference to an article in an entry includes that article in CKD -SKD condition
- Rule 2(b): Reference to articles in an entry includes mixtures or combination
- Rule 3(a): Where alternate classification available, specific description is required to be preferred
- Rule 3(b): Rely on the material that gives essential character to the article
- Rule 3(c): Apply that which appears later in the tariff
- Rule 4: Examine the function performed that is found in other akin goods
- Rule 5: Cases -packaging are to be classified with the primary article
- Rule 6: When more than one entries are available, compare only if they are at same level

Note: These Rules should be applied sequentially.

(b) Mr. C of Tamil Nadu supplied goods/services for ₹ 20,000 to Mr. M of Maharashtra. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

(1) Total price charged by Mr. C.

(2) Who is liable to pay GST?

Answer:

Computation of total price charged by Mr. C

Particulars	₹
Supply of goods/services	20,000
IGST @ 18%	3,600
Total price charged by Mr. C from Mr. M	**23,600**

Mr. C is liable to pay GST

Note: Location of supplier and place of supply are in different States. Therefore, IGST is applicable.

9. (a) Is there any option for registered taxable person to withdraw from the composition scheme?

Answer:

The registered taxable person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in Form GST CMP-04. Where the option of composition scheme is lapsed due to non-compliance of any of the eligibility conditions u/s 10 or rules made thereunder, then taxable person shall file an intimation of withdrawal in the same Form GST CMP-04 within 7 days of the occurrence of event leading to disability under the scheme. An intimation for withdrawal or cancellation of permission in respect of any place of business in a State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

(b) Write a brief note on GST Council.

Answer:

According to Article 279A of the Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

Members of GST Council:

The GST Council is a joint forum of the Centre and the States, and consists of the following members:

1. Chairperson: Union Finance Minister
2. Vice chairperson: to be chosen from amongst the members of Ministers of State government
3. Members:
   (a) The Union Minister of State, in -charge of Revenue/Finance
   (b) The Minister In -charge of finance or taxation or any other Minister nominated by each State Government

Quorum for GST Council Meetings:

- The quorum of GST council is 50% of total members
- Decision is taken by 3/4th majority (75%), wherein -
  a. the Central Government would have the weightage of 1 /3rd of the total vote cast; and
  b. the State Governments would have a weightage of 2 /3rd of the total votes cast.

Functions of the GST Council:

GST Council is basically entrusted with task to make recommendations on the different aspects of GST to the Union as well as states. GST Council under the Constitution is required to make recommendations on the following:

a. the taxes, cesses and surcharges which may be subsumed in the goods and services tax;
b. the goods and services that may be subjected to, or exempted from the goods and services tax;
c. model GST Laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
d. the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
e. GST rates including floor rates;
f. any special rates for a specified period, to raise additional resources during any natural calamity or disaster;
g. special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
h. any other matter relating to the GST, as the Council may decide.

The GST Council shall also recommend the date on which GST will be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

10. Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply o f goods or supply ofservices?

Answer:

The Government vide Circular No. 11/11 /2017 -GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in sec. 2(90) of the Central Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

While, supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

11. Whether GST will apply wherein goods are moved within the State or from the State of registration to another State for supply on approval basis?

Answer:

In terms of Circular No. 10/10 /2017- GST dated 18.10.2017, the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

Hence, all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-State supplies and attract IGST in terms of Section 5 of IGST Act. And those within the State will be eligible to CGST and SGST in terms of Section 9 of the CGST Act and SGST Act, respectively.

12. (a) Whether import of services will be liable to tax under GST regime?

Answer:

The following import of service will qualify as supply under the CGST Act, 2017:

1. As per sec. 7, import of service for a consideration whether or not in the course or furtherance of business is a supply;
2. As per Schedule I, import of service by a taxable person, even if made without consideration, from a related person or from any of his other establishments outside India, in the course or furtherance of business.

(b) Whether supply of goods by principal to his agent or by agent to his principal is taxable in the absence of consideration?

Answer:

As per sec. 7 read with Schedule I, following shall qualify as supply even if made without consideration:

1. Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
2. Supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

13. Define the term Non-taxable supply.

Answer:

As per Section 2(78) of the CGST Act, means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act.

a. Petroleum crude;
b. High speed diesel;
c. Motor spirit (commonly known as petrol);
d. Natural gas;
e. Aviation turbine fuel; and
f. Alcoholic liquor for Human consumption

14. Define a Casual Taxable Person

Answer:

Section 2(20) defines Casual Taxable Person as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

15. X Plc, UK provides access to SAP system to employees of its subsidiary based in India, but does not charge any fees for the same. Is this a supply under GSTlaw?

Answer:

Yes, in terms of Schedule I this is considered as supply, being an import of service from a related person located outside India. Hence, this will be subject to GST.

16. ABC Ltd provides cars on hire to drivers for a predetermined period at an agreed fee. Please mention whether this is a supply of service or supply of goods?

Answer:

As ABC Ltd has transferred the right to us e the cars to drivers for the pre agreed period, this will be regarded as a supply of service as provided under Schedule II of the CGST Act.

17. How will offers of "buy one get one free" be treated for the purpose of levy of GST?

Answer:

Circular 92/11 /2019- GST dated March 7, 2019 has clarified that taxability of such offers will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

18. Name all persons who are required to obtain registration irrespective of their turnover:

Answer:

As per Section 24 of the CGST Act, the following persons are required to obtain registration irrespective of their turnover:

(i) persons making any inter-State taxable supply;
(ii) casual taxable persons making taxable supply;
(iii) persons who are required to pay tax under reverse charge;
(iv) person who are required to pay taxunder sub-section (5) of section 9;
(v) non-resident taxable persons making taxable supply;
(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
(viii) Input Service Distributor, whether or not separately registered under this Act;
(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
(x) every electronic commerce operator;
(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person

19. Define Import of Services.

Answer:

Section 2(11) of the IGST Act defines import of services as a supply of any service where:
(i) the supplier of service is located outside India;
(ii) the recipient of service is located in India; and
(iii) the place of supply of service is in India

20. Define the term "Exempt supply".

Answer:

Section 2(47) of the CGST Act defines the term Exempt supply as "Exempt supply" means supply of any goods or services or both which attracts

- Nil rate of tax, or
- Wholly exempt from tax u/s 11 of CGST Act, or
- Wholly exempt from tax u/s 6 of IGST Act, or
- Non-taxable supply

21. Define "Zero Rated Supply"

Answer:

Section 16(1) of the IGST Act defines Zero rated supply as supply of any of the following types:
a. Export of goods or services or both;
b. Supply of goods or services or both to a SEZ developer or unit

22. ABC Security Services, a Proprietorship Firm, is engaged in providing security services to X Ltd, a company registered under the Companies Act. Who entity will be responsible for payment of GST for the security services- ABC Security Services or X Ltd.

Answer:

X Ltd, as prescribed under notification 29/2018 dated December 31, 2018 w.e.f. January 1, 2019.

23. Who is responsible for payment of GST on account of Priority Sector Lending Certificates (PSLC) – the seller or buyer?

Answer:

Seller of PSLCs to b e liable to pay GST under forward charge till May 27, 2018 and Buyer to pay under reverse charge w.e.f. May 28, 2018 (as per Notification No. 11/2018- Central Tax (Rate), dated 28th May 2018)

24. Define the term "Fixed Establishment".

Answer:

As per Section 2(7) of the IGST Act, "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs."

25. Name the types of services which are included in OIDAR services:

Answer:

Internet advertising, Cloud Services, Digital Data Storage, Online Gaming, Online Supplies of Digital Content, E-books, Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet, Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network.

26. Explain the registration requirement for supplier of OIDAR services located outside India.

Answer:

The supplier of OIDAR services referred to in sub- section (1) of Section 14 of the IGST is required to obtain a single registration under the Simplified Registration Scheme of the Government for payment of integrated tax.

27. Whether supply of goods or services without consideration is liable to tax?

Answer:

The activities enumerated in Schedule I will qualify as supply even if made without consideration. Accordingly, such supplies in the absence of consideration are liable total. To illustrate, following are the activities which will qualify as supply in the absence of consideration and eventually would be liable to tax:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
   Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
   (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Study Note – 4, 5 & 6

TIME OF SUPPLY UNDER GST,
VALUE OF SUPPLY UNDER GST,
PLACE OF SUPPLY UNDER GST

Learning Objective:

- ***The goal of the study note is to learn time, value and place of supply. Through this study note one can learn when the liability of GST arises and in which State, person is liable to pay GST.***

1. Choose the correct alternative and also provide your justification:

i. What is the time of supply of goods, in case of forward charge?

a. Date of issue of invoice
b. Due date of issuance of invoice
c. **Earlier of (a) and (b)**
d. None of the above

Reason :

As per sec. 12, the time of supply of goods shall be the earlier of the following dates:

1. the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or
2. the date on which the supplier receives the payment with respect to the supply.

ii. What is the time of supply of service if the invoice is issued within 30 days from the date of provision of service?

a. Date of issue of invoice
b. Date on which the supplier receives payment
c. Date of provision of service
d. Earlier of (a) & (b)

Reason :

As per sec. 13, the time of supply of services shall be the earliest of the following dates:

a) the date of issue of invoice by the supplier, if the invoice is issued within due date of issuance of invoice or the date of receipt of payment, whichever is earlier; or
b) the date of provision of service, if the invoice is not issued within such due date or the date of receipt of payment, whichever is earlier

iii. What is the time of supply of service for the supply of taxable services up to ₹ 1,000 in excess of the amount indicated in the taxable invoice?

a. **At the option of the supplier – Invoice date or Date of receipt of consideration**
b. Date of issue of invoice
c. Date of receipt of consideration
d. Date of entry in books of account

Reason:
As per sec.13, where the supplier of taxable service receives an amount up to ₹1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

iv. What is the time of supply o f service in case of reverse charge mechanism?

a. Date of payment as entered in the books of account of the recipient
b. Date immediately following 60 days from the date of issue of invoice
c. Date of invoice
d. **Earlier of (a) & (b)**

Reason:
As per sec. 13(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates:

a. the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
b. the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

v. What is time of supply of goods liable to tax under the reverse charge mechanism?

a. Date of receipt of goods
b. Date on which the payment is made
c. Date immediately following 30 days from the date of issue of invoice by the supplier
d. **Earlier of (a) or (b) or (c)**

Reason :
As per sec. 12(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates:

a) the date of the receipt of goods; or
b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

vi. The value of supply of goods and services shall be the

a. Transaction Value

b. Market Value

c. Maximum Retail Price

d. None of the above

Reason :

As per sec. 15, the value of a supply of goods or services or both sh all be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

vii. When can the transaction value be rejected for computation of value of supply

a. When the buyer and seller are related and price is not the sole consideration

b. When the buyer and seller are related or price is not the sole consideration

c. It can never be rejected

d. When the goods are sold at very low margins

Reason :

As per sec. 15, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

viii. What deductions are allowed from the transaction value

a. Discounts offered to customers, subject to conditions

b. Packing Charges, subject to conditions

c. Amount paid by customer on behalf of the supplier, subject to conditions

d. Freight charges incurred by the supplier for CIF terms of supply, subject to conditions

Reason :

As per sec. 15(3), the value of the supply shall not include any discount which is given:

a. before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

b. after the supply has been effected, 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. input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

   Buy more, save more offers (i.e. staggered discount) and periodic or yearend discount in terms of agreement entered into at or before the time of supply is now covered under section 15(3) of the CGST Act, 2017. These are allowed as deduction from supply and no ITC is required to reverse.

ix. Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be .....% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

a. 100
b. 110
c. 125
d. 150

Reason:
Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be 110% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

x. What will be the value of supply if Manu supply television set for ₹ 35,000 along with the exchange of an old TV and if the price of the television set without exchange is ₹ 50,000, the open market value of the television set is:

a. ₹ 50,000
b. ₹ 35,000
c. ₹ 65,000
d. ₹ 15,000

Reason :
As per Rule 27, "Open market value" of supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

xi. Supply of goods in the course of import into the territory of India is:

a. Intra-State supply
b. Inter-State supply
c. Export
d. Neither Export nor Import

Reason :
As per sec. 7(2) of the IGST Act, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.

xii. Which of the following is an inter-State supply?

a. Supplier of goods located in Kolkata and place of supply of goods is to an SEZ located in Kolkata
b. Supplier of goods located in Kolkata and place of supply of goods in Delhi
c. Supplier of goods located in Kolkata and place of supply of goods is to an SEZ located in Chandigarh
d. All of the above

Reason:
As per sec. 7 of the IGST Act, supply of goods, where the location of the supplier and the place of supply are in:
(a) two different States;
(b) two different Union territories; or
(c) a State and a Union territory,
- shall be treated as asupply of goods in the course of inter-State trade or commerce.

xiii. Place of supply in case of installation of elevator is
a. Where the movement of elevator commences from the supplier's place
b. Where the delivery of elevator is taken
c. Where the installation of elevator is made
d. Where address of the recipient is mentioned in the invoice

Reason :
As per sec. 10 of the IGST Act, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

xiv. Place of supply of food taken on board at Delhi for an aircraft departing from Delhi to Bangalore via Hyderabad is
a. Address of the aircraft carrier mentioned on the invoice of the supplier
b. **Delhi**
c. Bangalore
d. Hyderabad

Reason :
As per sec. 10 of the IGST Act, where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

xv. Which of the following is an intra-State supply?
a. Supplier of goods located in Delhi and place of supply of goods SEZ located in Delhi
b. Supplier of goods located in Delhi and place of supply of goods in Jaipur
c. Supplier of goods located in Delhi and place of supply of goods in Delhi
d. All of the above

Reason :
As per sec. 8 of the IGST Act, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply.

xvi. Subsidy given by Government is includible in consideration of supply
a. True
b. **False**

Reason:
Section 2(31) defines consideration and excludes subsidy given by Central and State Government.

xvii. Employer and Employee are regarded as related persons.
a. **True**
b. False

Reason:
Definition of related person as per Section 15(5) includes employers and employees as related persons.

2. (a) What do you mean by export of service?

Answer:

"Export of services" means the supply of any service when, –
a) the supplier of service is located in India;
b) the recipient of service is located outside India;
c) the place of supply of service is outside India;
d) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in sec. 8

(b) What is the place of supply of online information and database access or retrieval service?

Answer:

As per sec. 13(12) of the IGST Act, the place of supply of the online information and database access or retrieval services will be location of recipient of service. However, person receiving such service will be deemed to be located in taxable territory (i.e. India) if any two of the following non-contradictory conditions are fulfilled:
a) the location of address presented by the recipient of service via internet is in taxable territory;
b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;
c) the billing address of recipient of service is in the taxable territory;
d) the internet protocol address of the device used by the recipient of service is in the taxable territory;
e) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;
f) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory ;
g) the location of the fixed land line through which the service is received by the recipient is i n taxable territory.

3. (a) Determine the time of supply if supply involves Sale on Approval Basis:

	Particulars	Removal of goods	Issue of Invoice	Accepted by Recipient	Receipt of payment
1	**Acceptance communicated within 6 months of removal**	**01-Nov-20**	**25-Nov-20**	**15-May-21**	**25-Nov-20**
2	**Amount paid to supplier before informing acceptance**	**01-Nov-20**	**25-Nov-20**	**15-May-21**	**12-Nov-20**
3	**Acceptance not communicated within 6 months of removal**	**01-Oct-20**	**15-May-21**	**15-May-21**	**02-May-21**

Answer:

Goods Sent on Approval [Sec. 31(7)]
Invoice in respect of goods sent 'on approval' is required to be issued at the earlier of the end of 6 months from their removal or approval to accept supply is indicated to supplier.

Particulars	Removal of goods	Issue of Invoice	Accepted by Recipient	Receipt of payment	Time of supply
Acceptance communicated within 6 months of removal	01-Nov-20	25-Nov-20	15-May-21	25-Nov-20	25-Nov-20
Amount paid to supplier before informing acceptance	01-Nov-20	25-Nov-20	15-May-21	12-Nov-20	12-Nov-20
Acceptance not communicated within 6 months of removal	01-Oct-20	15-May-21	15-May-21	02-May-21	01-Apr-20

(b) What will be the time of supply where multiple invoices are issued for a single consignment involving supply of goods?

Answer:

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 the event, the supplier has not received the payment in case of multiple invoices issued for a single consignment of supply, the time of supply shall be earlier of date of issuance of invoice; or due date for issuance of invoice.

4. (a) What is the meaning of location of recipient ofservice?

Answer:

As per sec. 2(14) of the IGST Act, location of recipient of service means:

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.

(b) From the following particulars, compute the taxable value of supply as per Rule 30 of the CGST Rules

	₹
Direct material consumed (inclusive of IGST @ 18%)	**2,36,000**
Direct labour	**1,60,000**
Other direct expenses	**40,000**
Indirect material	**25,000**
Factory overhead	**80,000**
Administrative overhead (20% relating to production capacity)	**1,50,000**
Selling and distribution expense	**1,25,000**
Quality Control	**36,000**
Realisable value of scrap/wastage	**20,000**
Profit Margin	**18%**

Answer:

Computation of taxable value of supply

Particulars	₹
Direct material consumed [₹ 2,36,000 / 118%]	2,00,000
Direct labour	1,60,000
Other direct expenses	40,000
Indirect material	25,000
Factory overhead	80,000
Administrative overhead (20% of ₹ 1,50,000)	30,000
Selling and distribution expense	---
Quality Control	36,000
Realisable value of scrap/wastage	(20,000)
Cost of Production	5,51,000
Taxable Value of Supply as per Rule 30 [110% of ₹ 5,51,000]	6,06,100

5. Comment on the following:

a. What will be the place of supply for services in relation to organising events?

b. What will be the place of supply of services for admission to sporting events?

c. What will be the place of supply for restaurant and catering services?

d. What is the place of supply of services by way of transportation of goods?

Answer:

a. As per sec. 12(7) of the IGST Act, the place of supply of services provided by way of:

A. organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

B. services ancillary to organisation of any of the events or services referred to above, or assigning of sponsorship to such events:

(i) to a registered person, shall be the location of such person;

(ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

However, where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories 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 basis as may be prescribed.

b. As per sec. 12(6) of the IGST Act, the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

c. As per sec. 12(4) of the IGST Act, the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

d. As per sec. 12(8) of the IGST Act, the place of supply of services by way of transportation of goods, including by mail or courier to, —

(i) a registered person, shall be the location of such person;

(ii) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

New proviso inserted in Sec. 12 (8) Integrated Goods and Service Amendment Act, 2018 which provides that if the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods

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

Answer:

As per sec. 12(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates:

a) the date of the receipt of goods; or

b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

c) the 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.

(b) What would be the time of supply in case of works contract with respect to immovable property?

Answer:

In terms of entry (a) to clause 6 of schedule II, the works contract in relation to immovable property under the GST regime should be treated as supply of service. Accordingly, in terms of Section 13, the time of supply of services shall be the earliest of the following:
(a) Date of issue of invoice; or
(b) Due date of issue of invoice under Section 31; or
(c) Date when the payment entry in relation to supply of services is recorded in books of accounts; or
(d) Date on which the payment is credited to suppliers bank account.

(c) What do you mean by continuous supply of goods?

Answer:

As per sec. 2(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

7. State the provision in respect of time of supply of services.

Answer:

As per sec. 13, the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the following provisions:

- The time of supply of services shall be the earliest of the following dates:
  a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed u/s 31(2) [i.e. 30 days and in few cases 45 days]or the date of receipt of payment, whichever is earlier; or
  b) the date of provision of service, if the invoice is not issued within the period prescribed u/s 31(2) or the date of receipt of payment, whichever is earlier; or
  c) the 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.

- However, where the supplier of taxable service receives an amount up to ₹ 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

- In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates:
  a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
  b) the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier :

- In case of supply of vouchers by a supplier, the time of supply shall be:
  a) the date of issue of voucher, if the supply is identifiable at that point; or
  b) the date of redemption of voucher, in all other cases

- Where it is not possible to determine the time of supply as per aforesaid provisions, the time of supply shall:
  a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
  b) in any other case, be the date on which the tax is paid.

8. (a) When will the recipient and supplier be treated as related?

Answer:

As per sec 15, persons shall be deemed to be "related persons" if:
(i) such persons are officers or directors of one another's businesses;
(ii) such persons are legally recognised partners in business;
(iii) such persons are employer and employee;
(iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family.

Note:
- Further, persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.
- The term "person" also includes legal persons.

(b) What will be the value of supply of goods or services if the consideration is not wholly in money?

Answer:

Value of supply of goods or services if the consideration is not wholly in money shall be determined in the following sequential order:

a. open market value of such supply;
b. sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
c. value of supply of goods or services or both of like kind and quality;
d. sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined as per Rule 30 or Rule 31 in that order.

Example:

- Where a new phone is supplied for ₹ 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000.
- Where a laptop is supplied for ₹ 40,000 along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known, the value of the supply of the laptop is ₹ 44,000.

9. (a) Rajguru Industries stock transfers 1,00,000 units (costing ₹ 10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is ₹ 9,70,000.

Answer:

In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the open market value of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., ₹ 11,00,000 (i.e. 110% *10,00,000).

(b) Define pure agent.

Answer:

As per explanation to Rule 33 of the CGST Rules, pure agent means a person who -

a. enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
b. neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
c. does not use for hi s own interest such goods or services so procured; and
d. receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

10. Define Inter State Supply

Answer:

According to Section 7 of the IGST Act, the following would be regarded as Inter State supply:

- Supply of goods/services when location of supplier and the place of supply is in different states/ different union territories or a state and a union territory.
- Supply of goods/services in the course of import till they cross the customs frontier to be treated as interstate supply.
- Import of Services into India
- Supply of goods/services, when the supplier is located in India and place of supply is outside, in case the conditions of export of services are not fulfilled)
- Supply of goods and/ or services to or by a SEZ developer or an SEZ unit
- Any supply not covered above and is not an intrastate supply shall also be deemed interstate supply.

11. Define Place of Supply in case of supplies in territorial waters:

Answer:

Section 9 of the IGST Act provides, where the location of the supplier or the place of supply is in the territorial waters, the location of supplier or place of supply shall be deemed to be the coastal state or Union Territory where the nearest point of the appropriate baseline is located.

12. A, based in Kolkata, places an order for supply of a transformer on B, who is based in Maharashtra. A also places the instruction that th e transformer should be shipped to C, who is also based in Maharashtra. Would this be an intra state or inter state supply for B.

Answer:

It will be an inter state supply as per Section 10 (1)(b) of the IGST Act as the principal place of business of the person(A) directing B to supply the goods is in Kolkata.

13. What is the place of supply of goods when there is no movement of such goods arising from the supply?

Answer:

The location of the goods at the time of delivery to the recipient would be the place of supply – Section 10 (1)(c) of the IGST Act.

14. What is the general rule for place of supply of services?

Answer:

Section 12(2) of the IGST provides that services which are not covered by sub sections 3 to 14 of Section 12, the place of supply of such services would be as under:

- When provided to registered person – location of such person
- When provided to other than a registered person –
  - location of the service receiver where address on exists in the records of the service provider, or;
  - location of the service provider.

15. What is the place of supply for Banking Services?

Answer:

Section 12(12) of the IGST Act specifies that the place of supply for Banking Services would be as follows

- Location of service receiver on records of the supplier of Banking services
- In case the location of service receiver is not on records, then the location of the service provider

16. What will be the place of supply for leased line services

Answer:

Section 12(11) of IGST Act provides that the place where the leased line is installed for receipt of services, would be the place of supply for such services.

In the case of supply of services relating to a leased circuit, where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in **each of the respective States or Union territories**, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely: —

1. The number of points in a circuit shall be determined in the following manner:
   (i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

2. The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory .

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

Answer:

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 tax credit related to such discount availed earlier.

18. What is the place of supply for intermediary services?

Answer:

As per Section 13(8) of the IGST Act, the location of supplier would be the place of supply in case of intermediary services.

19. Mr. A, an architect, based in Kolkata gets a contract from Mr. B also based in Kolkata for designing the architecture of a house in Orissa. What will be place of supplyin this case?

Answer:

The place of supply will be Orissa - as per Section 12(3) of the IGST Act.

20. A company based in USA is awarded a contract by A Ltd, an Indian company for remote maintenance of the servers of A Ltd, where the servers are located in Singapore. Will this be an import of service by A Ltd.

Answer:

As per Section 13(3) of the IGST Act, as the location of server is outside India, the place of supply would be outside India and hence not taxable.

21. If OIDAR service provider is based outside India and provides services to recipients in India, where is the place of supply?

Answer:

Yes, as per Section 13 of the IGST Act.

22. Define Open Market Value

Answer:

As per CGST Rules,
"Open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

23. If the value of supply includes GST, how is the tax amount computed?

Answer:

Rule 35 of the CGST Rules provides the following formula for computing tax in case the value of supply is inclusive of IGST, CGST and or SGST/UTGST:
Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

24. What is the rule for valuation of supply of goods or services based on cost?

Answer:

Rule 30 of CGST Rules provides where that value of supply is not determinable by any of the preceding rules specified for valuation, in such a case, the value of supply should be 110 per cent of the cost of manufacture/production/acquisition of goods or cost of provision of services.

25. In case of supply of goods between distinct persons, specify the valuation provision.

Answer:

Rule 28 of CGST Rules provides that the value of supply between distinct persons would be at open market value or in the absence of open market value, value of supply of goods or services of like kind and quality or in the absence of both, to be determined in terms of Rule 30 or 31 in that order. Further, if the recipient of supply is eligible to avail full input tax credit, the value declared in the invoice would be deemed as the open market value.

26. In case of supply of services received from an associated enterprise located outside India, what is the time of supply?

Answer:

As per second proviso to Section 13(3(b), the time of supply in the above mentioned case is the earlier of the following:

- Date of entry in the books of account of the recipient of supply
- Date of payment

27. What is the time of supply for interest, late fee, penalty for delayed payment

Answer:

As per Section 13(6) of the CGST Act, the time of supply in the above mentioned cases is the date of receipt of such addition by the supplier.

28. Define continuous supply of services

Answer:

Section 2(33) of the CGST Act defines continuous supply of services as follows:
" Continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, by notification, specify.

29. What is the time of supply for continuous supply of services:

Answer:

In case of continuous supply of service, the time of supply would be:

a) **Where the due date of payment is ascertainable from the contract**, the invoice shall be issued on or before the due date of payment.
b) **Where the due date of payment is not ascertainable from contract**, the invoice shall be issued before or at the time when the supplier of service receives the payment.
c) **Where the payment is linked to the completion of an event,** the invoice shall be issued on or before the date of completion of that event.

Study Note – 7, 8 & 9

INPUT TAX CREDIT (ITC), REGISTRATION UNDER GST, TAX INVOICE, CREDIT AND DEBIT NOTES AND OTHER DOCUMENT UNDER GST

Learning Objective:

- ***GST is payable on net of ITC. Registered person is eligible for ITC against proper documents like tax invoice, etc. This study note will help to understand the various provisions relating to registration, input tax credit and tax invoice.***

1. Choose the correct alternative and also provide your justification:

(a) Whether definition of Inputs includes capital goods?

a. Yes
b. No
c. Few of them
d. None of them

Reason :
As per sec. 2(59), "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(b) Who can take input tax credit?

a. **Registered dealer not opting for composition scheme**
b. Unregistered dealer
c. Registered dealer opting for composition scheme
d. None of the above

Reason :
As per sec. 16, every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. However, registered dealer opting for composition scheme is not eligible for availing input tax credit.

(c) Input tax credit on capital goods and inputs can be _____ installment(s):

a. One
b. Two
c. Thirty Six
d. Six

Reason :
Input tax credit on capital goods and inputs can be availed in one installment

(d) The time limit to pay the value of supply with taxes to avail the input tax credit?
a. Three months
b. Six Months
c. One hundred and eighty days
d. Till the date of filing of Annual Return

Reason :
As per sec. 16(2), where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

(e) What is the maximum time limit to claim the Input tax credit?
a. Till the date of filing annual return
b. Due date of September month which is following the financial year
c. **Earliest of (a) or (b)**
d. Later of (a) or (b)

Reason :
As per sec. 16(4), a registered person shall not be entitled to take input tax credit 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 or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

(f) Which one of the following is true?
a. Registered person no t liable to collect tax till his aggregate turnover exceeds threshold limit
b. **A person can't collect tax unless he is registered**
c. A person can collect the tax during the period of his provisional registration
d. Both (a) and (b) are correct

Reason :
Unregistered dealer cannot collect tax. Further, a registered person (voluntarily) can collect tax though his turnover does not exceed the threshold limit.

(g) Within how many days a person should apply for registration?
a. Within 90 days from the date h e becomes liable for registration
b. Within 60 days from the date he becomes liable for registration
c. **Within 30 days from the date he becomes liable for registration**
d. No time limit

Reason :
As per sec. 25, every person who is liable to be registered shall apply for registration within 30 days from the date on which he becomes liable to registration.

(h) What is the validity of the registration certificate?
a. One year
b. Two years
c. Five years
d. Valid till it is cancelled

Reason :
The registration certificate is valid till it is cancelled. However, Certificate of registration issued to a casual taxable person or a non- resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.

ix. Within how many days an application for revocation of cancellation of registration can be made?
a. Within 7 days from the date of service of the cancellation order
b. Within 15 days from the date of service of the cancellation order
c. Within 30 days from the date of service of the cancellation order
d. Within 45 days from the date of service of the cancellation order

Reason :
As per sec. 30, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order.

x. Under what circumstances physical verification of business premises is mandatory?
a. **Physical verification of business premises is a discretionary power of proper officer.**
b. If additional information for registration asked by the proper officer is not submitted within specified time.
c. If photograph of the business premise is not uploaded in the common portal within specified time
d. If certificate of registration is obtained on misrepresentation of facts.

Reason :
Physical verification of business premises is a discretionary power of proper officer.

xi. Tax invoice must be issued by ___
a. Every supplier
b. Every taxable person
c. Registered persons not paying tax under composition scheme
d. All of the above

Reason:
As per sec. 31, tax invoice must be issued by registered persons not paying tax under composition scheme.

xii. A bill of supply can be issued in case of inter -State and intra-State:

a. **Exempted supplies**
b. Supplies to unregistered persons
c. Both of above
d. None of the above

Reason :
As per sec. 31(3), a registered person supplying exempted goods or services or both or paying tax under the provisions of sec. 10 shall issue, instead of a tax invoice, a bill ofsupply.

xiii. The tax invoice should be issued _____ the date of supply of service.

a. **Within 30 days from**
b. Within 15 days from
c. Within 1 month from
d. On

Reason:
As per sec. 31(2), the tax invoice should be issued within 30 days from the date of supply of service.

xiv. How many digits HSN code is required to be mentioned in the tax invoice by a registered person if his annual turnover is below ₹ 1.5 crores in the preceding financial year

a. **No HSN required**
b. 2 digits HSN code
c. 4 digits HSN code
d. None of the above

Reason :
The number of digits of HSN code that a registered person needs to specify in the tax invoice issued by him based on the annual turnover of the said person in the preceding financial year. The number of digits of HSN code based on annual turnover are as follows –

Annual Turnover in the preceding financial year	Number of digits of HSN Code
Upto ₹ 150 lakhs	Nil
more than ₹ 150 lakhs and upto ₹ 5 crores	2
more than ₹ 5 crores	4

xv. A registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than _____ subject to such conditions and in such manner as may be prescribed.

a. ₹ 100
b. ₹ 500
c. **₹ 200**
d. ₹ 1,000

Reason :
As per sec. 31(3)(b), a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than ₹ 200.

xvi. Input Tax credit on inputs and capital goods can be taken on :

a. **Receipt of goods**
b. Dispatch of goods b y supplier

Reason:
Section 16(2) provides that input tax credit can be taken on receipt of goods.

xvii. A Banking company can avail the following percentage of eligible input tax credit on a monthly basis:

a. 40
b. 50
c. 75
d. 60

Reason:
Section 17(4) specifies the rate at 50%.

xviii. In case of services provided by Head office of a Bank to its branches, there is _____in availment of input tax credit by the recipient branch.

a. Complete restriction
b. 50% restriction
c. **No Restriction**

Reason:
Second proviso to Section 17(4) of CGST Act provides that there is no restriction in such cases and the 50% restriction would not apply for such services for an entity with the same PAN.

xix. Input Tax Credit is available on following motor vehicles for transportation of passengers:

a. Upto 13 persons, including driver
b. All motor vehicles
c. Capacity of 13 persons, including driver.

Reason:
Section 17(5) covers this.

a. GST paid on construction of factory building is eligible for input tax credit
   a. True
   b. **False**

Reason:
Section 17(5)(c) restricts such credits.

2. (a) What are the conditions to be fulfilled for entitlement of input tax credit?

Answer:

As per sec. 16(2), a registered person will be entitled to claim input tax credit only upon fulfillment of the following conditions:

a) He is in possession of tax invoice/ debit note issued by a registered supplier or any other prescribed tax-paying documents;
b) He has received the goods and/or services or both;
c) The tax charged on such supply has actually been paid to the Government by the supplier (by way of cash or by utilizing input tax credit)
d) He has furnished a valid return.

Notes:
Where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Where a recipient fails to pay to the supplier (other than the supplies liable under reverse charge basis), the amount towards the value of supply along with tax payable thereon within 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon. However, the recipient shall be entitled to avail of the credit of input tax on subsequent payment made by him.

(b) What are the conditions for transfer of credit on account of sale, merger, amalgamation, de-merger, lease, transfer of business?

Answer:

The conditions prescribed under Rule 41 of the CGST Rules, 2017 are:

(a) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in Form GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee

- In the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Here, value of assets means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

(b) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(c) The transferee shall, on the common portal, accept the details so furnished by the transfer or and, upon such acceptance, the un-utilized credit specified in Form GST ITC-02 shall be credited to his electronic credit ledger.

(d) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account

3. (a) Compute ITC available to the X Ltd. for the month of Nov. 2019 from the following details:

Inward supplies	**GST in the invoice (₹)**
Raw material	**2,20,000**
Electrical Transformer to be used in the manufacturing process	**2,80,000**
Eatable items for consumption of the employee working in the factory	**4,000**
Material purchased for repairing of factory building which is capitalized	**30,000**
Packing material used in the factory	**1,40,000**
Goods procured for giving the same as Diwali gift	**50,000**
Inputs stolen from the factory	**20,000**
Machinery purchased (depreciation is claimed on the GST component)	**10,000**

Answer:

Statement showing Input tax Credit available during the month of Nov. 2019

Particulars	**Amount**
Raw material	2,20,000
Electrical Transformer to be used in the manufacturing process	2,80,000
Eatable items for consumption of the employee working in the factory	Nil
Material purchased for repairing of factory building	Nil
Packing material used in the factory	1,40,000
Goods procured for giving the same as Diwali gift	Nil
Inputs stolen from the factory	Nil
Machinery purchased (depreciation is claimed on the GST component)	Nil
Input tax credit available	**6,40,000**

(b) For claiming ITC, 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 those tax paying documents?

Answer:

As per Rule 36, the input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents:

a. an invoice issued by the supplier of goods or services or both as per sec. 31;
b. an invoice issued by the recipient in case of inward supplies from unregistered persons or reverse charge mechanism supplies, subject to the payment of tax;
c. a debit note issued by a supplier as per sec. 34;
d. 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;
e. an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor as per rule 54(1).

4. (a) Comment on the following:

1) Whether the Registration granted to any person is permanent?
2) Whether the proper Officer can reject an Application for Registration?
3) Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?
4) Can a person without GST registration claim ITC and collect tax?

Answer:

1) The registration once granted to any person is permanent except for non -resident taxable person and casual taxable person unless surrendered, cancelled, suspended.
2) The Proper officer can reject the Application for registration in Form GST REG 05, if after filling the Application of registration in Form GST REG 01 the proper officer issued notice in Form GST REG 03 for further clarification and no response or no satisfactory response is given by the applicant.
3) Every person should have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration u/s 25. However, as per sec. 25(7), PAN is not mandatory for a non - resident taxable person for obtaining registration.
4) A person without GST registration can neither collect GST from his customers nor claim any input tax credit of GST paid by him.

(b) Who is (I) casual taxable person; (II) non -resident taxable person? Is there any Advance tax to be paid by such persons at the time of obtaining registration?

Answer:

As per sec. 2(20), casual taxable person means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

As per sec. 2(77), non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration u/s 25(1), 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. Such deposited amount can be utilised against the output tax liability and balance amount shall be refunded to the applicant subject to sec. 54.

5. (a) Can the proper Officer Cancel the Registration on his own?

Answer:

As per sec. 29(2), the proper officer may cancel the registration, after giving an opportunity of being heard, of a person from such date, as he may deem fit, where:
a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

1. a person paying tax u/s 10 has not furnished returns for three consecutive tax periods; or
2. any registered person, other than a person specified above, has not furnished returns for a continuous period of 6 months; or
3. any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
4. registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

(b) What are the circumstances in which a Credit Note is to be issued?

Answer:

As per Sec. 34(1), for issuing a Credit note, an invoice for a supply should have been issued earlier. A credit note may be issued in the following cases:

- The taxable value on which the tax is collected is more than the actual taxable value;
- The tax charged is more than what should have been charged;
- The recipient has returned the goods;
- The recipient has found that the goods or services supplied are deficient.

6. Describe the details to be mentioned in a tax invoice.

Answer:

A tax invoice referred to in sec. 31 shall be issued by the registered person containing the following particulars:

a. name, address and Goods and Services Tax Identification Number of the supplier;
b. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets

c. or numerals or special characters hyphen or dash and slash symbolised as "–" and "/" respectively, and any combination thereof, unique for a financial year;
d. date of its issue;
e. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
f. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is ₹ 50,000 or more (on the request of the recipient if the value of the taxable supply is less than ₹ 50,000);
g. Harmonised System of Nomenclature code for goods or services (number of digits of HSN code as prescribed by the Board);
h. description of goods or services;
i. quantity in case of goods and unit or Unique Quantity Code thereof;
j. total value of supply of goods or services or both;
k. taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
l. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
m. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
n. place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
o. address of delivery where the same is different from the place of supply;
p. whether the tax is payable on reverse charge basis; and
q. signature or digital signature of t he supplier or his authorised representative

7. Comment on the following:

(a) What is the time limit to raise an invoice for services?

(b) What is the time limit for issuing invoices by Banking Companies?

(c) Can an Unregistered person issue a tax invoice?

(d) Can a consolidated bill of supply be issued on a periodic basis?

Answer:

a) As per Rule 47, invoice has to be raised within 30 days of supply of service.
b) In case of banking companies, financial institutions including NBFCs, the time limit for issuing an invoice is extended to 45 days (instead of 30 days in respect of other supplier) from the date of supply of service.
c) Only a registered person can issue a tax invoice. Further, sec. 32 prohibits collection of tax by persons who are not registered under the GST law.
d) A separate 'Bill of Supply' is not necessary if the value of the goods or services supplied is less than ₹ 200 unless the recipient demands for such a bill. In such a case, a consolidated 'Bill of Supply' should be prepared at the close of each day in respect of all such supplies to each recipient, separately.

8. (a) What are the contents of a "Bill of Supply"?

Answer:

A Bill of Supply should have the following details:

a. Name, address, GSTIN of the supplier
b. Consecutive Serial Number not exceeding sixteen characters , unique for a financial year having alphabets/ numerals and special characters being " –" or "/" only
c. Date of Issue
d. Name, address of the recipient and GSTIN/UID of the recipient, if registered, of the recipient;
e. HSN code of Goods or Services
f. Description of Goods / Services
g. Post discount/abatement value of Goods and Services
h. Signature/Digital Signature of the Suppler or his authorized representative.

Further, any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

(b) There are few purchases against which input tax credit is not available. Please mention.

Answer:

As per sec. 17(5), input tax credit shall not be available in respect of the following:

(a) Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies, namely:
   A. further supply of such vehicle; or
   B. transportation of passenger ; or
   C. imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used —
   (i) For making the following taxable supplies, namely: —
      (A) Further supply of such vessels or aircraft; or
      (B) Transportation of passengers or
      (C) Imparting training on navigating such vessels or
      (D) Imparting t raining on flying such aircraft
   (ii) For transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or (aa);
   Provided that the input tax credit in respect of such services shall be available —
   (i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or (aa) are used for the purposes specified therein
   (ii) Where received by a taxable person engaged —
      (I) In the manufacture of such motor vehicles, vessels or aircraft; or
      (II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both —

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or (aa) except when used for the purposes specified therein, life insurance and health insurance; Provided that input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on vacation such as leave or home travel concession; Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of Fraud, Detention, Seizure and confiscation of goods or conveyance.

9. Whether input tax credit can be availed on input services and capital goods (lying in stock) when there is application for new registration or during voluntary registration under section 18?

Answer:

No. In case of new registrations and voluntary registrations, input tax credit can be availed only on the stock held (inputs, semi-finished goods or finished goods) preceding the day when he is liable to pay tax or preceding to the date of grant of voluntary registration. Input service and capital goods lying in stock are not eligible for ITC.

10. Name the inclusions of the value of exempt supplies:

Answer:

Section 17(3) of the CGST Act specifies the following inclusions:

- Value of supplies on which recipient is liable to pay tax under reverse charge
- Transactions in securities

- Sale of land
- Sale of building, subject to conditions

11. Raw materials used by a manufactured are destroyed by fire. Will the manufacturer be required to reverse input tax credit on the raw materials lost in fire.

Answer:

Yes, by virtue o f Section 17(5) (h).

12. An employer takes group mediclaim policy for its employees, please advise whether the employer would be able to claim input tax credit on the GST paid to the insurance company.

Answer:

No, input tax credit on health insurance is ineligible as per Section 17(5)(b)(iii) of CGST Act.

13. In case capital goods on which Input Tax credit has been availed are supplied, how GST is to be computed for such supplies:

Answer:

The GST in such cases would be higher of the following:

a. Input tax credit taken reduced by 5% per quarter for the period the goods have been used.
b. GST on the Transaction value at the time of supply

.

14. State the objectives of voluntary registration under GST.

Answer:

Advantages of voluntary registration under GST:

Legally recognized as supplier of goods or services; This helps in attracting more customers.

(i) Provide input tax credit to customers. As they can issue taxable invoices, they can collect GST. Their customers can take input credit on their purchases.
(ii) They will be more competitive than other small business as buying from them will ensure input credit.
(iii) Voluntarily registered persons can take input credit on their own purchases and input services like legal fees, consultation fees etc.
(iv) They can make inter -state sales without many restrictions.

15. Mr. A, an unregistered person under GST, has place of profession in Kolkata, West Bengal, supplies taxable services to Arbi Ltd., a registered person under GST in Mumbai. The turnover of Mr. A in the financial year is ₹ 12 lakhs. Whether Mr. A is required t o be registered under GST?

Answer:

Any person making inter -state supply has to compulsorily obtain registration and therefore in such cases, section 5(4) of IGST will not come into play.

However, Services providers providing aggregate supplies including inter-state services up to ₹ 20 lakh will be exempted from registration. Here, Mr. A is not liable to pay IGST. Since, registration is not made mandatory to him.

16. A casual taxable person making taxable supply in India has to compulsorily take registration. What are the returns to be filed by the casual taxable persons?

Answer:

The casual taxable person is required to furnish the following returns electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

(a) **FORM GSTR-1** giving the details of outward supplies of goods or services to be filed on or before the tenth day of the following month.

(b) **FORM GSTR- 2**, giving the details of inward supplies to be filed after tenth but before the fifteenth day of the following month.

(c) **FORM GSTR-3** to be filed after fifteenth day but before the twentieth day of the following month.

However, a casual tax person shall not be required to file any annual return as required by a normal registered taxpayer.

17. Is there any Advance tax to be paid by Casual Taxable Person and non-Resident Taxable person at the time of obtaining Registration?

Answer:

Yes, it has been made mandatory in the Act, that a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under section 27(2), 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. This provision of depositing advance additional amount of tax equivalent to the estimated tax liability of such person is applicable for the period for which the extension beyond 90 days is being sought.

18. Write the importance of tax invoice under GST.

Answer:

Under GST, a tax invoice is an essential document for the recipient to avail Input Tax Credit (ITC).
A registered person cannot avail Input Tax Credit unless he is in possession of a tax invoice or a debit note. GST is chargeable at the time of supply. Invoice is an important indicator of the time of supply.

19. A Ltd as an ISD has input service credit of ₹ 35 lakhs used by more than one locations, to be distributed among recipients locations X, Y and Z. The turnover of X, Y, Z in preceding financial year is ₹ 10 crores, ₹ 15 crores and ₹ 5 crores respectively. The credit of ₹ 5 lakhs pertains to input service received only by Z. What is the credit attributable to X, Y, Z?

Answer:

Particulars	Amount (in ₹)
Total credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X 10 crores / 30 crores * 30 Lakhs	10 Lakhs
Credit distributable to Y 15 crores / 30 crores * 30 Lakhs	15 Lakhs
Credit distributable to Z 5 crores / 30 crores * 30 Lakhs = 5 Lakhs Credit directly attributable to Z 5 Lakhs	10 Lakhs

20. State the manner of issuing invoice as per Rule 48 of the CGST Act, 2017.

Answer:

(1) The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely, by marking on face of the invoice
   (a) ORIGINAL FOR RECIPIENT;
   (b) DUPLICATE FOR TRANSPORTER; and
   (c) TRIPLICATE FOR SUPPLIER.

(2) The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely, -
   (a) ORIGINAL FOR RECIPIENT; and
   (b) DUPLICATE FOR SUPPLIER.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1.

w.e.f. 1-2-2019, Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.

Study Note – 10, 11 & 12

ACCOUNTS AND RECORDS UNDER GST, PAYMENT OF TAX, TDS & TCS UNDER GST

Learning Objective:

- ***This study note will help to understand the provisions relating to maintenance of various account and records by a registered person and computation of tax liability and payment thereof and also discuss about the various provisions of TDS and TCS.***

1. Choose the correct alternative and also provide your justification:

i. The books and other records are to be maintained at:

a. place where the books and accounts are maintained

b. Place of address of the Proprietor/ Partner/Director/Principal Officer

c. Principal place of business mentioned in the Certificate of Registration

d. Any of the above

Reason :

As per sec. 35, every registered person shall keep and maintain books and other records, at his principal place of business, as mentioned in the certificate of registration.

ii. Accounts are required to be maintained in: a. Manual form

a. Electronic form

b. Manual and electronic form

c. **Manual or electronic form Reason** :

Reason :

Accounts shall be maintained in either of the form.

iii. Who among the following, even if not registered, is required to maintain records?

a. Owner or operator of warehouse or godown

b. Owner or operator of any other place used for storage of goods

c. Every transporter

d. **All of the above**

Reason :

As per sec. 35(2), every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

iv. Taxable person has to maintain his records for a period of:

a. expiry of 72 months from the due date of filing of Annual Return for the year

b. expiry of 36 months from the due date of filing of Annual Return for the year c. expiry of 48 months from the due date of filing of Annual Return for the year d. expiry of 90 months from the due date of filing of Annual Return for the year

Reason :

As per sec. 36, every registered person required to keep and maintain books of account or other records, 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.

v. Amounts credited to electronic Credit Ledger are _____.

a. **Input Tax Credit**

b. Output Tax payable

c. Amount Transferred through NEFT

d. Amount paid through Credit Card

Reason :

As per sec. 49(2), the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger.

vi. Balance in electronic credit ledger under IGST can be used against which liability?

a. IGST, CGST and SGST /UTGST liability

b. IGST and CGSTliability

c. IGST liability only

d. None of them

Reason :

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order, at the option of the assessee .

vii. What is the due date for payment of tax?

a. Last day of the month to which paymentrelates

b. Within 10 days of the subsequent month

c. Within 15 days of the subsequent month

d. **Within 20 days of the subsequent month**

Reason :

Tax is required to be paid by 20th of the subsequent month (i.e., due date of filing of GSTR 3B).

viii. What is the rate of TDS?

a. **1%**
b. 5%
c. 12%
d. 18%

Reason :
As per sec. 51, tax is required to be deducted @ 1%.

ix. On what value TDS needs to be deducted?

a. Contra ct value
b. Invoice value including tax
c. **Invoice value excluding tax**
d. Contra ct value excluding tax

Reason :
As per Explanation to sec. 51(1), for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

x. What is e-commerce?

a. Supply of goods and/or services on an electronic platform for commerce other than the e-commerce operator himself
b. Supply of goods and/or services on an electronic platform for commerce including the e-commerce operator
c. Supply of goods and/or services on an electronic platform for commerce
d. **Supply of goods or services or both including digital products over digital or electronic network.**

Reason :
As per sec. 2(44), "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

2. (a) What are the basic accounts required to be maintained by a person at the principal place of business?

Answer:

As per sec. 35, every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of:

1. production or manufacture of goods;
2. inward and outward supply of goods or services or both;
3. stock of goods;
4. input tax credit availed;
5. output tax payable and paid; and
6. such other particulars as may be prescribed.

(b) What are the additional accounts to be maintained by the registered person as per Chapter VII of the CGST Rules, 2017?

Answer:

Every registered person, in addition to the records to be maintained under section 35 of the CGST Act, is required to maintain following additional accounts on a true and correct basis:

a) Goods or services imported or exported;
b) Supplies attracting payment of tax on reverse charge along with relevant documents (including invoices, bill of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers);
c) Accounts of stock in respect of goods received and supplied – containing particulars of opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and balance of stock including raw materials, finished goods, scrap and wastage thereof (these details need not be maintained by a composition dealer);
d) Advances received, paid and adjustments made thereto;
e) Tax payable on reverse charge basis;
f) TDS/TCS (not to be maintained by composite dealer)
g) Tax payable, 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 (Not applicable to composition dealer);
h) Names and complete addresses of suppliers from whom he has received the goods or services;
i) Names and complete addresses of the persons to whom he has supplied the goods or services; and
j) Complete addresses of the premises where the goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

3. (a) Is an agent required to maintain any set of books of account?

Answer:

As per sec. 2(5), —agent' means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

As per Rule 56(11), 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.

(b) What is meant by Cross-utilization of credit and how is it done in the Electronic Credit Ledger?

Answer:

Cross utilization means utilizing IGST/ CGST/ SGST/ UTGST liabilities against Electronic Credit Ledger under IGST/CGST/SGST/UTGST Act. The amount available in the Electronic Credit ledger may be used for making payment towards output tax payable under the Act or Rules.

4. Comment on the following:

(a) Is it possible to use input tax credit for payment of interest/ penalty?

(b) Is it possible to use input tax credit for payment of tax under reverse charge basis?

(c) Is it possible to pay CGST, IGST, UTGST and SGST together or should be paid separately in different challans?

(d) What is the threshold limit fo r tax deduction atsource?

Answer:

(a) As per sec. 49(4), the amount available in the electronic credit ledger may be used for making any payment towards 'output tax' payable only. Further, as per sec. 2(82), '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.

(b) 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

(c) Form GST PMT- 06 contains separate columns for CGST, IGST, UTGST and SGST which shall deposit the amount to the respective account of the government though paid through a single challan, therefore, CGST, IGST, UTGST and SGST can be paid together in a single challan.

(d) The threshold limit for tax deduction at source is ₹ 2.5 Lakh. However, for the purpose of ascertaining the amount of deduction, the value of supply shall be considered as the amount excluding taxes.

5. (a) Who is liable to deduct tax atsource?

Answer:

In terms of sec. 51(1), the Government may mandate the following person to deduct tax at source:

a. A department or establishment of the Central or State Government, or
b. Local authority, or
c. Governmental agencies, or
d. Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council. Following are the notified person:
   1. an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government,
- with 51 % or more participation by way of equity or control, to carry out any function;

2. society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
3. public sector undertakings.

Aforesaid persons are required to deduct tax at source from 01-10-2018.

Tax point : No tax is required to be deducted on supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person.

(b) What is the manner in which transfer of credit takes place on utilization of Central tax credit for payment of integrated tax?

Answer:

As per sec. 53, upon utilization of central tax credit for payment of integrated taxes, the amount collected as central tax will stand reduced to that extent and the Central Government will transfer an amount equal to the credit from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

6. (a) Under what circumstances can the Deductors mentioned in Section 51 deduct tax at source?

Answer:

The Deductors u/s 51 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/or services, notified by the Central Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees 2.50 lakh, exclusive of the tax as per the invoice.

(b) What is the penalty if an E Commerce operator failed to respond as required in a notice issued by Deputy Commissioner or an officer of higher rank?

Answer:

Failure to submit the required details will cause penalty under Section 52(14) of the Act upto ₹ 25,000. In addition to this, penalty under section 122 of the Act 'shall' also be there (₹ 10,000 or the amount of TCS involved, whichever is higher)

7. (a) What are the provisions in relation to interest under GST?

Answer:

As per sec. 50, interest is applicable on delayed payment of tax at the rate to be notified (not exceeding 18%) [Notified rate is 18%] and on undue or excess claim of input tax credit or on undue or excess reduction of output tax liability at the rate to be notified (not exceeding 24%) [Notified rate is 24%], calculated from the from the day succeeding the day on which such tax was due to be paid. Interest is applicable in case of undue or excess claim of input tax credit also.

(b) Is there any order in which liability of a person shall be discharged?

Answer:

Every taxable person shall discharge his tax and other dues in the following order:

a. self-assessed tax, and other dues related to returns of previous tax periods;
b. self-assessed tax, and other dues related to return of current tax period;
c. any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 or 67.

Notes:

- Tax dues' means the tax payable under this Act and does not include interest, fee and penalty.
- 'Other dues' means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

8. What are the accounts and records to be kept by registered person executing works contract?

Answer:

As per Rule 56(14) of the CGST Rules, 2017 every registered person executing works contract shall keep separate accounts for works contra ct showing –

(a) the names and addresses of the persons on whose behalf the works contract is executed;
(b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contra ct;
(c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contra ct;
(d) the details of payment received in respect of each works contract; and
(e) the names and addresses of suppliers from whom he received goods or services.

9. What is compulsorily audit?

Answer:

Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

As per Rule 80 (3) of the CGST Rules, 2017 every registered person whose aggregate turnover during a

financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

w.e.f. 1st February 2019, Every registered person **other than those referred to in the proviso to sub -section (5) of section 35** , whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub- section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

10. State the cases where the Department is liable to pay interest on delayed payment to a tax payer.

Answer:

The three scenarios where the Department is liable to pay interest on delayed payment to a tax payer are

1. Section 54(12) of the CGST Act, 2017: Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid. The applicable interest rate is 6% p.a.
2. Section 56 of the CGST Act, 2017: Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund. The applicable interest rate is 6%p.a.
3. Proviso to section 56 of the CGST Act, 2017: Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund. The applicable interest rate is 9%p.a.

Note: As per Section 54(14) of the CGST ACT, 2017 no refund shall be granted if refund amount is less than ₹ 1,000/-. Since, no refund is granted under Section 54(14) of the CGST Act, 2017, no interest is payable by the Department.

Study Note – 13, 14 & 15

RETURNS UNDER GST,
MATCHING CONCEPT UNDER GST,
EXPORT, IMPORT AND REFUND UNDER GST

Learning Objective:

- ***This study note will help to understand the provisions to filing of various return under GST laws. Further, one can learn the formalities to be done for export and import and refund thereof and can also learn the matching concept under GST.***

1. Choose the correct alternative and also provide your justification:

i. Every tax payer paying tax u/s 10 (Composition levy) shall file the return in:

a. Form GSTR 3 by 18th of the month succeeding the quarter
b. Form GSTR 4 by 18th of the month succeeding the quarter
c. Form GSTR 4 by 18th of the succeeding month
d. Form GSTR 4 by 20th of the month succeeding the quarter

Reason :
As per sec. 39, tax payer covered under composition scheme is required to file Form GSTR 4 by 18th of the month succeeding the quarter.

ii. The e-commerce operator collecting tax u/s 52 shall file its monthly return in:

a. Form GSTR 8 by 18th of the succeeding month
b. Form GSTR 7 by 20th of the month succeeding the quarter
c. Form GSTR 8 by 17th of the succeeding month
d. **Form GSTR 8 by 10th of the succeeding month**

Reason :
The e-commerce operator collecting tax u/s 52 shall file its monthly return in Form GSTR 8 by 10th of the succeeding month.

iii. The First return shall be filed by every registered taxable person for the period from:

a. The date on which he became liable for registration till the date of grant of registration
b. The date of registration to the last day of that month
c. The date on which he became liable for registration till the last day of that month
d. All of the above

Reason :

As per sec. 40, every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

iv. Every registered taxable person who is required to get his accounts audited u/s 35(5) shall furnish electronically:

a. Annual return
b. Audited copy of annual accounts
c. Reconciliation statement reconciling the value of supplies declared in the return and the financial statement
d. All of the above

Reason :

Every registered taxable person who is required to get his accounts audited u/s 35(5) is required to furnish all of the above electronically.

v. Refund application is to be filed before the expiry of _____ from the relevant date.

a. **Two years**
b. One year
c. 180 days
d. 270 days

Reason :

As per sec. 54, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the relevant date.

vi. What is the time limit for filing of refund application by a specialised agency of the UNO?

a. Before the expiry of eight months from the last day of the quarter in which such inward supply received
b. Before expiry of eight months from the last day of the month in which such inward supply received
c. Before expiry of six months from the last day of the month in which such inward supply was received
d. Before expiry of six months from the last day of the quarter in which such inward supply was received.

Reason :

As per sec. 54(2), a 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 or any other person or class of persons, as notified u/s 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund before the expiry of 6 months from the last day of the quarter in which such supply was received.

vii. Refunds would be allowed on a provisional basis in case of refund claims on account of zero-rated supplies of goods and/or services made by registered persons. At what percentage, would such provisional refunds be granted?

a. 65%
b. 70%
c. 80%
d. **90%**

Reason :
As per sec. 54(6), 90% of refunds may be allowed on a provisional basis in case of refund claims on account of zero -rated supplies of goods and/or services made by registered persons.

viii. The applicant is not required to furnish documentary evidence if the amount of refund claimed is less than:

a. ₹ 6 lacs
b. ₹ 2lacs
c. ₹ 10lacs
d. ₹ 12lacs

Reason :
As per proviso to sec. 54(4), where the amount claimed as refund is less than ₹ 2 lacs, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

ix. Interest on refund amount is required to be paid after expiry of from the date of receipt of the application

a. 60 days
b. 90 days
c. 180 days
d. 240 days

Reason :
As per sec. 56, interest on refund amount is required to be paid after expiry of 60 days from the date of receipt of the application.

x. Application for Refund is to be made in form:

a. **GST-RFD-01**
b. GST-RFD-01A
c. GST-RFD-0B
d. GST-RFD-02

Reason:
As per rule 89(1), application for refund is to be done in form GST-RFD-01.

2. What is the meaning of relevant dates in the context of refund?

Answer:

As per explanation to sec. 54, relevant date means:

a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods:
   (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
   (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
   (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of:
   (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
   (ii) issue of invoice , where payment for the services had been received in advance prior to the date of issue of the invoice;

d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

e) in the case of refund of unutilised input tax credit, the end of the financial year in which such claim for refund arises;

f) in the case where tax is paid provisionally, the date of adjustment of tax after the final assessment thereof;

g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

h) in any other case, the date of payment of tax.

3. (a) What are the details to be submitted while furnishing the details of outward supply in Form GSTR -1?

Answer:

The supplier has to furnish the details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during the tax period. Key points to be disclosed are as follows:

- Supplies made to registered persons
- Inter-State supplies to a consumer (non -registered person) where invoice value is more than ₹ 2,50,000/- should be separately captured.
- Zero Rated Supplies and Deemed Exports.
- Consolidated amount of Inter State Supplies and Intra-State supplies to a consumer (non-

registered person) for each rate oftax.

- Zero rated supplies, Exempted supplies, Nil-rated supplies, Exports (including deemed exports) and non-GST supplies should each be captured, separately.
- Tax liability arising in the current tax period where invoice is not issued in the current tax period (i.e., yet to be raised, in case of advance).
- Invoices issued in the current tax period for which tax was already paid earlier (adjusting the previous advances).
- Supplies made through e-commerce portal of other companies to registered taxable persons and other consumers, separately.
- Harmonized System of Nomenclature for goods and Service Accounting Code .
- Documents issued during the tax period

(b) What is GSTR-4A? What are the details that are required to be submitted in Form GSTR -4?

Answer:

Form GSTR -4A contains the details of inward supplies received by composition suppliers from registered taxable persons, debit/credit notes received, and tax deducted at source. This statement is auto populated from Forms GSTR-1, GSTR-5 and GSTR -7 filed by other assesses.

While furnishing the return in Form GSTR -4, the assesse has to furnish the following details:

a) Invoice wise details of inter -State and intra -State inward supplies received from registered and unregistered persons
b) Import of goods and services
c) Consolidated details of outward supplies
d) Debit and credit notes issued and received, if any
e) TCS Credit received
f) Consolidated statement of advances paid/adjusted
g) Amendment of outward supplies furnished in earlier returns.

4. (a) What do you mean by self - assessment?

Answer:

Under the GST regime, the responsibility to compute the correct output tax liability, eligible input tax credit and net tax liability lies with the assessee. The assessee must determine the rate of tax, value of supply and the output tax payable. The assessee must also decide the eligibility of input tax credit in respect of the various inward supplies. The determination of turnover, rate of tax, value of supply, eligibility to input tax credit, reversal of input tax credit, etc. done by the assessee himself is called as self - assessment.

(b) Whether the credit note issued by the supplier has to be matched with the corresponding reduction of input tax by recipient?

Answer:

As per sec. 43, the details of credit notes issued by the supplier in respect of outward supply and claimed as reduction in output tax liability has to be matched with a corresponding reduction of input tax by the recipient of the supply. Further, the credit note issued shall also be matched for duplication of reduction of output tax liability.

5. (a) What are the documents to be enclosed along with refund claim?

Answer:

Following documents are required to be enclosed along with the refund application:

a. Documentary evidence to establish that a refund is due to the applicant (prescribed under Rule 89(2) of the CGST Rules, 2017, and
b. Documentary evidence to prove that incidence of tax and interest had not been passed on to any other person. However, such evidence is not required where refund is being claimed on account of zero-rated supplies, inverted duty structure, etc.

(b) Under what circumstances, refund amount shall be paid to the applicant?

Answer:

As per sec. 54(8), the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to:

1. refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
2. refund of unutilised input tax credit;
3. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
4. refund of tax in pursuance of sec. 77;
5. the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
6. the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

6. (a) Whether bond or Letter of Undertaking (LUT) is required in the case of zero-rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

Answer:

As per sec. 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per sec. 2(47) of the CGST Act, exempt supply includes non -taxable supply. Further, as per sec. 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

(Circular No. 45 /19 /2018- GST dated 30 -05-2018)

(b) What will be the amount of bond furnished for exports and how will the bond be secured?

Answer:

The bond would c over the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself. **FORM RFD-11** under Rule 96A of the CGST Rules requires furnishing a bank guarantee with bond as a security. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.
Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹ 2,50,000. (Circular No. 8 /2017- GST October 4, 2017)

7. What is the Processing of refund applications filed by Canteen Stores Department?

Answer:

The Canteen Stores Department (the CSD), under the Ministry of Defence, as a person who shall be entitled to claim a refund of 50% of the applicable IGST/CGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD in terms of Notifications No. 6/2017- Central Tax (Rate), No. 6/2017- Integrated Tax (Rate) both all dated 28.06.2017.

In this regard, Central Government vide Circular No. 60/34/2018-GST dated 4.09.2018 has provided a manner and procedure for filing and processing of refund claims by CSD which is explained as below:

1. Invoice-based refund: It is clarified that the instant refund to be granted to the CSD is not for the accumulated input tax credit, but refund based on the invoices of the inward supplies of goods received by them.
2. Manual filing of claims on a quarterly basis: the CSD are required to apply for refund on a quarterly basis the CSD shall apply for refund by filing an application in FORM GST RFD-10A manually to the jurisdictional tax office which shall be accompanied with prescribed documents.
3. Processing and sanction of the refund claim: Upon receipt of the complete application in FORM GST RFD-10A, an acknowledgement shall be issued manually within 15 days of the receipt of the

application in FORM G ST RFD-02 by the proper officer. In case of any deficiencies in the requisite documentary evidences the same shall be communicated to the CSD by issuing a deficiency memo manually in FORM GST RFD-03. The proper officer may scrutinize:

a. The details contained in FORM RFD -10A, FORM GSTR -3B and FORM GSTR -2A.
b. The proper officer should ensure that the amount of refund sanctioned is 50 % of the taxes paid on the supplies received by CSD.

4. Sanctioning of Refund: The proper officer shall issue the refund sanction/rejection order manually in FORM GST RFD-06 along with the payment advice manually in FORM GST RFD-05 for each tax head separately.

Further, it is clarified that the CSD will apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. However, the payment of the sanctioned refund amount in relation to central tax / integrated tax shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority.

8. Write the procedural aspects of revision of returns under GST.

Answer:

The mechanism of fling revised returns for any correction of errors/omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Section 39(1) of the CGST Act, 2017 Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

Section 39(2) of the CGST Act, 2017, A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.;

Section 39(7) of the CGST Act, 2017, Every registered person who is required to furnish a return under sub section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub -section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

9. What do you understand by the concept of matched transaction?

Answer:

Matched Transactions

(i) The details in a return of inward supplies of a recipient should be matched in prescribed time and manner
- With Outward supplies furnished by corresponding taxable person in his return (supplier)
- With IGST paid on goods imported under Section 3 of the Customs Tariff Act 1975 which represents the Additional Duty of Customs (for which Credit was available under the erstwhile Central Excise Act)
- To identify any duplicate claims of input tax credit

(ii) When the claim for input tax credit in respect of inward supplies matches with the corresponding outward supply or IGST in respect of goods imported, the same shall be finally accepted and communicated to the recipient in the prescribed manner.

(iii) Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including IGST claimed on imports shall be matched after the due date for furnishing the return in FORM GSTR-3B (Return with payment of tax to be filed on or before 20th of the following month). The matching is done for the following parameters based on the GSTIN of the Supplier and the recipient

(a) GSTIN of the supplier;
(b) GSTIN of the recipient;
(c) Invoice/ or debit note number;
(d) Invoice/ or debit note date;
(e) taxable value; and
(f) tax amount:

It may be noted that if the supplier has not paid the tax and/or not filed the return on or before the due date (or extended due date, if any), the return filed by him shall not be treated as a valid return for the purposes of the above matching exercise. The transactions between the parties interest, will be treated as unmatched.

The rule provides for two specific circumstances, where the claims for input tax credit are treated as Matched

(a) Where the claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that

were accepted by the recipient on the basis of FORM GSTR-2A without amendment, if the corresponding supplier has furnished a valid return.

(b) Where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

(iv) Final acceptance of input tax credit and communication thereof.

10. What is the provision for interest on mismatched transactions?

Answer:

Recipient will be liable to payment of interest in every case when discrepancy is added for the period starting from the date of availing the credit till the corresponding additions are made.

If the supplier declares the details of invoice or debit note in his valid return filed within the time specified u/s 39(9) i.e. before the due date of filing of the return for the month of September of the subsequent financial year or filing of annual return whichever is earlier the recipient is eligible to reduce from his output tax liability the amount so added earlier.

In case of such reduction in output tax liability, he is entitled for refund of interest paid as per above. However this interest shall not exceed the amount of interest paid by the supplier.

11. What is import of services?

Answer:

''Import of services" means the supply of any service, where —

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, it shall qualify as import of services.

As per Section 7(4) of IGST Act, 2017 - Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter -State trade or commerce.

12. List the items which constitutes supply of goods as deemed export.

Answer:

As per Notification No. 48/2017- Central Tax, dated - 18th October, 2017, the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed below in the Table as deemed exports, namely: -

Sl. No.	Description of supply
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017 -Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

13. M/ s A Ltd., manufacturer of exempted excisable goods for export. Company availed input stage rebate (ITC on inputs) used in the manufacture of exported goods. Whether the company is eligible for refund of ITC on inputs?

Answer:

Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there under.

14. Whether the details furnished under GSTR-1 and GSTR-2 can be rectified? Is there any time limit for revision / rectification of such details?

Answer:

It may also be noted that there is no concept of revision of a filed return under the GST regime. However, the details furnished in Forms GSTR-1 and GSTR-2 which have remained unmatched as per Section 42 or 43 can be rectified as and when the error or omission is discovered. However, no rectification is permissible after filing the annual return or the return for the month of September of the following year (whichever is earlier).

15. Who is a goods and service tax practitioner? Whether the goods and service tax practitioner can file returns of behalf of the registered taxable persons?

Answer:

Goods and service tax practitioner is a person who has been approved to act as a goods and service tax practitioner as per Section 48 of the GST Act. He has to satisfy the conditions and eligibility as prescribed under the Rules to act as a goods and service tax practitioner. A registered taxable person can authorise an approved goods and service tax practitioner to file the returns in Form GSTR-1, GSTR-2, GSTR-3, GSTR-4, GSTR-5,GSTR-6, GSTR-7, Annual return in GSTR-9 and Final return in GSTR-10, and also to perform other tasks as may be prescribed. In respect of returns filed by the goods and service tax practitioner, the registered taxable person will be responsible for the correctness of the details furnished in the returns.

Study Note – 16, 17 & 18

ASSESSMENT, INSPECTION, SEARCH & SEIZURE, AUDIT UNDER GST, GOODS AND SERVICES T AX, (Compensation to State) ACT, 2017

Learning Objective:

- ***This study note will help to understand the provisions to filing of various return under GST laws. Further, one can learn the formalities to be done for export and import.***

1. Choose the correct alternative and also provide your justification:

i. Assessment means:

a. Determination of tax liability under the GST law

b. Determination of refund under the GST law

c. c. Determination of no tax under the GST law

d. d. None of the above

Reason :

As per sec. 2(11), assessment means determination of tax liability and includes self-assessment, re- assessment, provisional assessment, summary assessment and best judgment assessment.

ii. A taxable person may apply for provisional assessment:

a. when the taxable person is not able to determine the value of goods and/or services

b. when the taxable person is not able to determine the rate of tax.

c. (a) or (b)

d. (a) and (b)

Reason :

As per sec. 60, 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 reason s for payment of tax on a provisional basis.

iii. What are the consequences, where a registered person fails to furnish the return required u/s 39 or sec. 45, even after the service of a notice u/s 46?

a. The proper officer may proceed to assess the tax liability of the said person to the best of his judgement.

b. issue an assessment order within a period of five years from the date specified under Section 44

c. (a) or (b)

d. **(a) and (b)**

Reason :
As per sec. 62, where a registered person fails to furnish the return u/s 39 or sec. 45, even after the service of a notice u/s 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of 5 years from the date specified u/s 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

iv. If the registered person furnishes a valid return within _____ of the service of the assessment order u/s 62(1), the said assessment order shall be deemed to have been withdrawn.

a. **30 days**
b. 60 days
c. 1 month
d. 2 months

Reason :
As per sec. 62(2), where the registered person furnishes a valid return within 30 days of the service of the assessment order, the assessment order u/s 62(1) shall be deemed to have been withdrawn.

v. The tax authorities may conduct audit u/s 65 at:

a. the place of business of the registered person
b. the place of residence of the registered person
c. the office of the tax authorities
d. **(a) or (c)**

Reason :
As per sec. 65(2), the officers tax authorities may conduct audit at the place of business of the registered person or in his office.

vi. The time limit for completion of the audit u/s 65(1) is:

a. **3 months from the date of commencement of audit**
b. 6 months from the date of commencement of audit
c. 12 months from the date of commencement of audit
d. None of the above

Reason :
As per sec. 65(4), the audit u/s 65(1) shall be completed within a period of 3 months from the date of commencement of the audit

vii. Who can direct the registered person to get its records specially audited u/s 66?

a. **An officer not below the rank of Assistant Commissioner, with the prior approval of the Commissioner**
b. An officer not below the rank of Joint/Additional, with the prior approval of the Chief Commissioner
c. An officer not below the rank of Chief Commissioner, with the prior approval of the Principle Chief Commissioner
d. None of the above

Reason :
As per sec. 66, if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

viii. Special Audit can be directed by a proper officer if he is of the opinion that:

a. Value requires verification
b. Value has been overstated
c. Value has not been correctly stated
d. All of the above

Reason :
As per sec. 66, if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

ix. The order u/s 64 may be withdrawn:

a. On an application made by taxable person,
b. If the Additional/Joint Commissioner considers that such order is erroneous
c. (a) or (b)
d. The order passed u/s 64 cannot be withdrawn

Reason :
As per sec. 64(2), on an application made by the taxable person within 30 days from the date of receipt of order passed u/s 64(1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order.

2. (a) What is the time limit for passing final assessment order in case of provisional assessment?

Answer:

As per sec. 60(3), the proper officer shall, within a period of 6 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 6 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 6 months;

(b) by the Commissioner for such further period not exceeding 4 years.

(b) What are the consequences on conclusion of provisional assessment by way of passing final assessment order in so far as short / excess remittance of tax is concerned?

Answer:

The consequences on concluding the provisional assessment by way of passing final assessment order would be as follows:

(a) **Additional tax liability** : In case of short remittance of taxes in terms of final assessment order, the additional tax liability, if any should be remitted along with interest at the rate prescribed u/s 50(1) from the first day after the due date of remittance of taxes as prescribed u/s 39(7) till the date of actual payment [Sec. 60(4)];

(b) **Excess remittance of tax on provisional basis** : In case of excess remittance of taxes in terms of final assessment order, the registered person is entitled to refund of such excess remittance in the manner as provided in sec. 54(8) along with interest as provided u/s 56 [Sec. 60(5)]

3. Write brief note in respect of assessment u/s 62.

Answer:

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of fling annual return.

1. Sec. 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, u/s 39 or as the case may be, or final return on cancellation of registration u/s 45 of the Act. Issuing notice u/s 46 appears to be a pre -condition f or initiating proceedings u/s 62 of the Act.
2. Non-compliance with the notice u/s 46 paves the way for intimating the proceedings under this section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice u/s 46 proceed to assess the tax liability in accordance with the provision of Rule 100 to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.

3. It may be noted that a return filed u/s 39 can be revised not later than the due date of furnishing of return for the month of September following the end of the financial year or actual date of filing annual return u/s 44, whichever is earlier.
4. Therefore, issuance of notice u/s 46 is a necessity for commencing proceedings u/s 62. Non-issuance of notice u/s 46 closes the door on invoking sec. 62 although other provisions are available to recover the tax dues.
5. If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in sec. 2(117) to mean a return filed u/s 39(1) of the Act on which self-assessed tax has been paid in full. In order to avail the facility of withdrawal of the assessment order passed, filing of a valid return is required, including payment of taxes declared therein.
6. Time limit of 5 years (extended period for cases covered u/s 73), is also applicable for issuing order u/s 62.
7. Consequence of late fee u/s 47 and interest u/s 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.
8. An order passed under this section shall be communicated to the registered person in FORM GST ASMT 13.

4. Comment on the following:

a. What action may be taken by the proper officer in case no satisfactory explanation is sought after the discrepancies are bought to the notice of the registered person?

b. What kind of audits are envisaged under the GST law?

c. When shall special audit u/s 66 be applicable?

d. What is a non-cognizable offence?

Answer:

a. In case, after accepting the discrepancies, no satisfactory explanation is furnished within 30 days or such further period as may be permitted, proper officer may:
   (i) Initiate Audit of accounts by the tax authorities u/s 65; or
   (ii) Initiate special audit u/s 66; or
   (iii) Initiate inspection, search and seizure u/s 67; or
   (iv) proceed to determine the tax and other dues u/s 73 or sec. 74

b. Following audits are envisaged under law:
   (i) Audit by Tax Authorities [Sec. 65]
   (ii) Special Audit by Chartered Accountant or Cost Accountant nominated by Commissioner [Sec. 66]
   (iii) Audit of Accounts by Chartered Accountant or Cost Accountant where turnover exceeds ₹ 2 crores [Sec. 35(5), 44(2), Rule 80(3)]

c. Direction for special audit is given having regard to nature and complexity of the case and the interest of the revenue. Direction can be given if officer is of the opinion that value has not been correctly declared or the credit availed is not within normal limits [Sec. 66(1)]

d. Non-cognizable offence means an offence in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without the permission of a Court.

5. (a) What are the safeguards provided for a person who is placed under arrest?

Answer:

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.

(b) Enlist the goods which are subject to compensation cess.

Answer:

Following goods are subject to compensation cess:

- Pan Masala
- Tobacco and tobacco products
- Cigarettes
- Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite excluding jet and peat.
- Aerated waters
- Motor vehicles

6. (a) Are there any other class of officers who are required to assist proper officers in implementation of the CGST Act, 2017?

Answer:

As per sec. 72, following officers are required to assist proper officers in the implementation of GST Act. The categories specified in Act are as follows:

a. Police
b. Railways
c. Customs
d. Officers of State/Union Territory engaged in collection of GST
e. Officers of State/Central Government engaged in collection of land revenue
f. All village officers
g. Any other class of officers as may be notified by the Government.

(b) What process of audit is required to be followed by the officer?

Answer:

As per Rule 101, following process is to be followed for conduct of audit by officer:

(i) 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.
(ii) Proper Officer shall record the observations in audit notes.
(iii) Proper Officer may inform discrepancies noticed during audit to registered person
(iv) Registered Person shall reply to discrepancies
(v) Proper officer shall finalize findings of audit only after due consideration of reply
(vi) On the conclusion of audit, Proper Officer shall inform the Registered Person whose records are audited about findings, reason for findings and assessee's right and obligations within 30 days in Form GST ADT-02.

7. What is the purpose of GST compensation cess?

Answer:

Cess under GST is a compensation cess that will be levied on certain goods and services under section 8 of the GST (Compensation to States) Act, 2017. It is levied on inter-State and intra-State transactions o f goods and services to compensate the revenue losses occurred to the States because of the implementation of GST in the country. It means Under GST, in addition to tax on supply (which are CGST + SGST/UTGST on intrastate supplies and IGST on interstate supplies), a GST Cess is to be levied on supply of certain goods.

It is levied to compensate states who may suffer any loss of revenue due to the implementation of GST. As GST is a consumption based tax, the state in which consumption of goods or services happens will be eligible for the revenue on supplies. As a result, manufacturing states like Maharashtra, Tamil Nadu, Gujarat, Haryana and Karnataka are expected to face a decrease in revenue from indirect taxes. In order to compensate these states for this loss of revenue, GST Cess will be levied on supply of certain goods, which will be distributed to these states. This Cess will be levied for 5 years from the date of implementation of GST.

According to the GST cess (Compensation to State) Act, 2017, a compensation cess would be levied on specific items and services for compensation to the States for the loss of revenue on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (101st Amendment) Act, 2016.

GST cess levied this way would be credited to the GST compensation fund, from where it will be used to compensate the tax revenue losses of the States caused by GST implementation. The unutilized funds, if any, would be distributed among the Centre and the States equally. The state governments would receive cess in the ratio of the indirect tax revenues generated by them in the last year before the implementation of GST.

8. What is provisional assessment?

Answer:

As per section 60(1) of the CGST Act, 2017 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.

The proper officer (i.e. The Asst. Commissioner/Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis a t such rate or on such value as may be specified by him.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed (Section 60(2) of the CGST Act, 2017).

9. State the cases where assessment of unregistered persons is done.

Answer:

Section 63 is applicable to assessment of unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers the cases whose registration was cancelled as per section 29 (2) of the CGST Act. Section 29(2) of the Act covers 5 instances as follows:

1. A person who contravenes the provisions of this Act or Rules made thereunder;
2. A composition person who fails to furnish returns for 3 consecutive tax periods.
3. A person other than composition person who fails to furnish returns for 6 consecutive months.
4. A person who has sought voluntary registration but has failed to commence business within 6 months.
5. Where registration has been obtained by way of fraud, wilful misstatement or suppression of facts.

10. Write the differences between Search and Inspection.

Answer:

'Search' involves an attempt to find something. Search, in tax/legal parlance, is an action of a government official (a tax officer or a police officer, depending on the case) to go and look through or examine carefully a place, person, object etc. in order to find something concealed or to discover evidence of a crime. The search can only be done under the proper and valid authority of law.

'Inspection' is the act of examining something, often closely. In tax/legal language, it is a softer provision than search. It enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner/operator of a warehouse or godown.

11. State the differences between Audit under Section 65 and Audit under Section 66.

Answer:

Differences between Audit under Section 65 and Audit under Section 66:

Components	Section 65	Section 66
Nature of Audit	In this section, we have a departmental audit	In this section, we have a special audit
Conducted by	It is conducted by officers of the department authorised by the commissioner	It is conducted by Chartered accountant /cost accountant nominated by the commissioner
Prior Notice	Prior notice of 15 days is required	o such notice/intimation is required
Time for conclusion of the audit	The conclusion of the audit is given in 3 months, further extension of 6 months is allowed	The conclusion of the audit is given in 90 days, further extension of 90 days is allowed
Audit Findings/ Report	Audit reports should be intimated soon upon completion of the audit	Audit reports should be shown to deputy/ assistant commissioner
The opportunity of being heard	No specific provision	Yes, where material gathered during the audit is to be used in any proceedings against the auditee
Action based on a report	Yes, under section 73 by the issuance of SCN (Show Cause Notice)	Yes, under section 73 by the issuance of SCN (Show Cause Notice)

12. How to calculate GST compensation cess?

Answer:

The GST cess on an eligible product will be calculated according to the rate specified in the GST cess rate schedule and on the actual taxable value (transaction value) of the supply, not on the GST tax.

For cess applicable on imports, the GST cess amount will be calculated on the taxable value + customs duty, i.e. the same value on which IGST is levied.

Study Note – 19, 20 & 21

ADVANCE CONCEPTS GST, JOB WORK UNDER GST, E-WAY BILLS UNDER GST

Learning Objective:

- ***This study note will help to understand the various advance concepts of the GST like recovery, appeals and revisions. Further, one can learn the mechanism required to be followed in case of job work and transportation of goods.***

1. Choose the correct alternative and also provide your justification:

i. What is the time limit for issue of order in case of fraud, misstatement or suppression?

a. 30 months
b. 18 months
c. 3 years
d. **5 years**

Reason :
As per sec. 74(10), the proper officer shall issue the order within a period of 5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 5 years from the date of erroneous refund.

ii. What is the maximum amount of demand for which the officer can issue an order u/s 73 in case of other than fraud, misstatement or suppression?

a. Amount of tax + interest + penalty of 10% of tax or ₹ 10,000/ - whichever is higher
b. Amount of tax + interest + penalty of 10% of tax
c. ₹ 10,000/-
d. Amount of tax + interest + 25% penalty

Reason :
As per sec. 73(9), the proper officer shall determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order.

iii. Is there any time limit for issue of notice u/s 76 in cases where tax collected but not paid?

a. **No time limit**
b. 1 year
c. 3 years
d. 5 years

Reason :
There is no time limit for issue of notice u/s 76 in cases where tax collected but not paid?

iv. Recovery of amount payable by a defaulter can be made from:
a. Customer
b. Bank
c. Post Office
d. All of the above

Reason :
As per sec. 79, recovery of amount payable by a defaulter can be made from bank, post office, customer, etc.

v. Who may make an application for Advance Ruling?
a. Jurisdictional officer
b. Applicant
c. Both (a) and (b)
d. Concerned Officer

Reason :
As per sec. 97, an applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought

vi. Within how many days the Authority shall pronounce its decision on Advance Ruling from the date of receipt of application?
a. 30 days
b. 60 days
c. 90 days
d. 120 days

Reason :
As per sec. 98(6), the Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

vii. What is the valid tenure for the e -way bill for a distance of upto100 KMS?
a. **One day**
b. Two days
c. One week
d. None of the above

Reason :
As per Rule 138, validity tenure for the e -way bill for a distance upto 100 KMS is one day.

viii. From what time will the period of one or three years be calculated u/s 143?

a. The day when such inputs and/or capital goods are sent to job-worker
b. The day when a job- worker receives the said goods directly
c. Both (a) and (b)
d. None of the above

Reason :
As per sec. 143(3), where the inputs sent for job work are not received back by the principal after completion of job work or are not supplied from the place of business of the job worker within a period of 1 year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

Similarly, as per sec.143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by t he principal within a period of 3 years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

ix. When should a job- worker go for registration?

a. Always
b. Only if his aggregate turnover exceeds the threshold limits specified u/s 22 of the Act
c. Never
d. None of the above

Reason :
A job worker is required to obtain registration only if his aggregate turnover exceeds threshold limit, irrespective of the fact whether job worker and principal are situated in same state or different states.

2. (a) Under what circumstances, the proper officer shall invoke provisions of sec. 73(1) to serve show cause notice on the person chargeable with tax? What is the time limit for issue of show cause notice by the proper officer u/s 73(2)?

Answer:

The proper officer shall serve notice u/s 73(1) along with a summary, electronically in Form GST DRC-01on the person chargeable with tax for any reason other than fraud, willful misstatement or suppression of facts, when he has reasons to believe that tax has not been paid or short paid or erroneously refunded or input tax credit has been wrongly availed or utilized. The proper officer shall issue show cause notice at least 3 months prior to the time limit of 3 years for issuance of order i.e. Before completion of 3 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to, or within 3 years from the date of erroneous refund, as the case may be.

(b) What is the prescribed monetary limit for different levels of officers for issuance of show cause notices and orders under Section 73 and 74?

Answer:

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:

Officer of Central Tax	Monetary limit for issuance of show cause notices and passing of orders u/ s 73 and 74 of CGST Act / section 20 of IGST Act		
	Central	Integrated	Central & Integrated
Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding ₹ 20 lakhs	
Deputy or Assistant Commissioner of Central Tax	Above ₹10 lakhs and not exceeding ₹ 1 crore	Above ₹20 lakhs and not exceeding ₹2 crore	
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	

3. What are the modes of recovery of tax available to the proper officer?

Answer:

As per sec. 79, the following options are available to the proper officer:

(a) **Adjustment with Refund:** The proper officer may deduct or may require any other specified officer in Form GST DRC-09to deduct the amount so payable from any money owing to such person.

(b) **Detaining and selling of goods:** The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person. The goods shall be sold through a process of auction including e-auction, for which a notice shall be issued in Form GST DRC -10 clearly indicating the goods to be sold and the purpose of sale. The proper officer shall issue a notice to the successful bidder in Form GST DRC -11requiring him to make the payment within a period of 15 days from the date of auction. On payment of the full bid amount the possession of the said goods shall be transferred to the successful bidder and issue a certificate in Form GST DRC-12.

(c) **Recovery from third parties:** The proper officer may, by a notice in Form GST DRC-13, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government.

Where the third person makes the payment of the amount specified in the notice in Form GST DRC-13, then the proper officer shall issue a certificate in Form GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

(d) **Recovery through execution of a decree, etc.:** Where any amount is payable to the defaulter in the execution of a decree of a civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in Form GST DRC-15to the said court and the court shall, subject to the provisions of the Code of Civil Procedure,1908, execute the

attached decree, and credit the net proceeds forsettlement of the amount recoverable.

(e) **Detaining / attachment of movable or immovable property and adjustment of tax dues from sale proceeds:** The proper officer may, on an authorization by the competent authority, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid. Thereby issue an order of attachment or distrain and a notice for sale in Form GST DRC-16prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due If the due remains unpaid for a period of 30 days after any such distress, he may cause the said property to be sold. The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in Form GST DRC -17clearly indicating the property to be sold and the purpose of sale. With the proceeds of such sale, proper officer may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person.

(f) **Recovery of tax dues as arrears of land revenue:** The proper officer may prepare a certificate signed by him specifying the amount due from such person and send such certificate to the Collector of the District in Form GST DRC -18in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue.

(g) **Recovery through Court:** Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in Form GST DRC -19 to recover from the defaulter, the amount specified there under as if it were a fine imposed by him.

(h) **Recovery from Company in liquidation:** Where the Company is under liquidation, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in Form GST DRC -24.

4. (a) Can the applicant / Department file an appeal against the Ruling pronounced by the AAR?

Answer:

- Appellate Authority for advance ruling is set up for each state for:
  - Deciding the question involved where members of authority for advance ruling differ with each other.In this case, reference shall be made by authority for advance ruling
  - Filing appeal against the order of authority for advance ruling by the aggrieved applicant, concerned officer or jurisdictional officer.
- Appeal shall be filed within 30 days from the date of communication of order of authority for advance ruling.
- The period may be further extended by 30 days where appellant is prevented by sufficient cause from presenting the appeal.
- The appeal shall be decided within 90 days from date of filing appeal or making of reference by authority for advance ruling.

(b) Can an Advance Ruling given be nullified?

Answer:

As per sec. 104, where the Authority or the Appellate Authority finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.

(c) What are the questions or matters on which advance ruling can be obtained?

Answer:

As per sec. 97, 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.

5. (a) Under what circumstances Revisional Authority can revise the order passed under the CGST Act?

Answer:

As per sec. 2(99), "revisional authority" means an authority appointed or authorised for revision of decision or orders as referred to in sec. 108.

As per sec. 108, the Revisional Authority may either on his own motion or based on the information received by him or based on the request of the Commissioner of State Tax or Commissioner of Union Territory tax, could call for and examine the record of any proceeding, and if he considers that any decision or order passed under the CGST Act, or SGST Act or UTGST Act, by any officer subordinate to him is:

(a) erroneous in so far as it is prejudicial to the interest of the 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
(b) in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

Tax point: "Record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

(b) Whether the Appellate Tribunal has the same powers as that of Civil Court?

Answer:

As per sec. 111, the Appellate Tribunal shall, for the purposes of discharging its functions under the CGST Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

a. summoning and enforcing the attendance of any person and examining him on oath;
b. requiring the discovery and production of documents;
c. receiving evidence on affidavits;
d. d)subject to the provisions of sec. 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
e. issuing commissions for the examination of witnesses or documents;
f. dismissing a representation for default or deciding it ex-parte;
g. setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
h. any other matter which may be prescribed.

6. (a) What are the general disciplines to be followed while imposing penalties?

Answer:

As per sec. 126, following general disciplines to be followed while imposing penalties:

1. No officer shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
   - A breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000;
   - An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
2. The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
3. No penalty shall be imposed on any person without giving him an opportunity of being heard.
4. The officer shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.
5. When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

However, the provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

(b) Is there any penalty on the persons who aids or abets in offences attracting penalty in terms of sec. 122(1)?

Answer:

As per sec. 122(3), any activity pertaining to aiding or abetting the offence would be an offence attracting a penalty to the extent of ₹ 25,000/-. Further, following offences shall also be punishable with a penalty to the extent of ₹25,000:

a) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
b) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
c) fails to appear before the officer of Central Tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
d) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account.

7. (a) Is a job -worker required to take registration?

Answer:

As per Notification No. 07/2017- Integrated Tax, dt.14 -09-2017, the job workers engaged in making inter - State supply of services to a registered person are exempted from obtaining registration. However, such exemption is not available to a job-worker who is liable to be registered u/s 22(1) i.e., threshold limit or who opts for voluntarily u/s 25(3) ; or of section 25 of the said Act; or job worker is involved in taking supply of services in relation to the goods mentioned against serial number 151 in the Annexure to Rule 138 of the CGST Rules, 2017 i.e. Jewellery, goldsmiths' and silversmiths' wares as covered under Chapter 71 which do not require e-way bill (hereinafter referred to as "specified job worker").

Further, Notification No. 10/2017 – Integrated Tax dated 13.10.2017 has exempted the persons making inter - State supplies of taxable services and having an aggregate turnover not exceeding an amount of ₹ 20 lakhs in a financial year from obtaining registration.

(b) What are the documents and evidence deemed to be documents and evidence for the purpose of proceedings?

Answer:

As per sec. 145, the following shall be deemed to be documents and evidences for the purpose of any proceedings:

1. a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
2. a facsimile copy of a document; or
3. a statement contained in a document an d included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
4. any information stored electronically in any device or media, including any hard copies made of such information.

8. (a) What is an E -Way bill?

Answer:

E-way bill is an Electronic Way bill for movement of goods to be generated on the E-way bill portal. A GST registered person cannot transport goods in a vehicle whose value exceeds ₹ 50,000/- without an e -way bill that is generated on e-way bill gst.gov.in Alternatively, E-way bill can also be generated or cancelled through SMS, Android App and by site -to-site integration through API. When an E-way bill is generated, a unique E-way Bill Number (EBN) is allocated and is available to the supplier, recipient, and the transporter.

(b) Explain the circumstances under which e -way bill is notrequired?

Answer:

In the following events, no e -way bill is required to be generated:

a) where the goods being transported are specified in Annexure of Rule 138 of the CGST Rules;
b) where the goods are being transported by a non-motorized conveyance;
c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
d) In respect of movement of goods within such areas as are notified under Rule 138(14) of the Goods and Services Tax Rules of the concerned State.
e) where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of Form GST EWB-01.

(c) When can an e -way bill be cancelled?

Answer:

Where an e-way bill has been generated however, goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill. However, an e-way bill cannot be cancelled if, it has been verified in transit in accordance with the provisions of Rule 138B.

9. State the consequences of second and subsequent offence.

Answer:

Section 132(2) of the CGST Act, 2017 where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence withimprisonment for a term which may extend to five years and with fine.

10. Who is Adjudicating Authority?

Answer:

As per Section 2(4) of the CGST Act, 2017 "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include

- the Central Board of Excise and Customs, now the Central Board of Indirect Taxes and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

11. State the orders against which no appeals can be made.

Answer:

No appeals can be filed against the following orders: -

(a) Board can fix monetary limits below which no departmental appeal would be filed with respective authorities.

(b) An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(c) An order pertaining to the seizure or retention of books of account, register and other documents; or

(d) An order sanctioning prosecution under the Act; or

(e) An order passed under section 80 (payment of tax in installments).

12. State the composition of National Appellate Authority.

Answer:

The National Appellate Authority shall consist of —

(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

13. When an advance ruling is to be void?

Answer:

As per Section 104 of CGST Act, 2017, Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub- section (4) of section 98 or under sub- section (1) of section 101 has been obtained by the applicant or the appellant by

- fraud or
- suppression of material facts or
- misrepresentation of facts,

it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made there under shall apply to the applicant or the appellant as if such advance ruling had never been made.

Provided that no order shall be passed under this sub -section unless an opportunity of being heard has been given to the applicant or the appellant.

14. Who is mandatorily required to generate e-way bill?

Answer:

- **Where the goods are transported by a registered person – whether as consignor or recipient of supply as the consignee** (whether in his own conveyance or a hired one or a public conveyance, by road), the said person shall have to generate the e-way bill (by furnishing information is part B on the common portal] [Rule138(20].
- **Where the goods are transported by railways or by air or vessel,** the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, information in part B on the common portal [Rule 138(2A)].
- **Where the e-way bill is not generated by the registered person and the goods are handed over to the transporter, for transportation of goods by road,** the registered person shall furnish the information relating to the transporter in Part B on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

15. What are the documents in lieu of e-way bill?

Answer:

Where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill:

(a) Tax invoice or bill of supply or bill of entry; or

(b) A delivery challan, where the goods are transported for reasons other than by way of supply [Rule 138A(5)].

Study Note – 22, 23, 24 & 25

TRANSITIONAL PROVISIONS, ANTI-PROFITEERING, REPLYING TO DEPARTMENT NOTICES UNDER GST, OPERATION OF GST PORTAL

Learning Objective:

- ***This study note will help to understand the various transitional provisions of the GST along with anti-profiteering mechanism.***

1. Choose the correct alternative and also provide your justification:

i. The ITC in respect of the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, shall be claimed by filing Form

a. Form GST Tran 1
b. Form GSTR 1
c. Form GST Tran 3
d. None of the above because it will be automatically transferred

Reason :
As per sec. 140, the ITC in respect of the amount of CE NVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, shall be claimed by filing Form GST Tran 1.

ii. As per sec. 171, any benefit of input tax credit is required to be

a. Passed on to the recipient by way of commensurate reduction in price
b. Transferred to the special reserve account
c. Passed on to the account of Central Government and State Government (50% each)
d. None of the above

Reason :
As per sec. 171, any benefit of input tax credit is required to be passed on to the recipient by way of commensurate reduction in price

iii. What is the address of the website of common portal of GST

a. **www.gst.gov.in**
b. www.gstgov.in
c. www.cgst.gov.in
d. d. www.sgst.gov.in

Reason :
The address of the website of common portal of GST is www.gst.gov.in

iv. The GSTN portal is handling:
a. Various return
b. Registration
c. Payment of GST
d. All of the above

Reason :
The GSTN portal is handling all of the given functions.

v. In case of transitional provision, the input tax credit of central excise which is carried forward in the last return, to be carried forward as :
a. IGST
b. CGST
c. SGST/ UTGST
d. CGST & SGST/ UTGST.

Reason:
Erstwhile balance of central excise to be carried as central goods and services tax.

2. Enlist the services available at the GST portal.

Answer:

Following important services are available at the GST portal:
- Application for Registration for Normal Taxpayer, ISD, Casual Dealer
- Application for GST Practitioner
- Opting for Composition Scheme (GST CMP -02)
- Stock intimation for Composition Dealers (GST CMP-03)
- Opting out of Composition Scheme (GST CMP-04)
- Filing GST Returns
- Payment of GST
- Filing Table 6A of GSTR -1 (Export Refund)
- Claim Refund of excess GST paid (RFD-01)
- Furnish Letter of Undertaking (LUT)(RFD -11)
- Transition Forms (TRAN -1, TRAN-2, TRAN-3)
- Viewing E-Ledgers

3. What are the silent features of the GSTIN?

Answer:

The GSTN is a complex IT initiative. It will establish a uniform interface for the taxpayer and also create a common and shared IT infrastructure between the Centre and States.

- Trusted National Information Utility: The GSTN is a trusted National Information Utility (NIU) providing reliable, efficient and robust IT backbone for the smooth functioning of GST in India.
- Handles Complex Transactions: GST is a destination-based consumption tax. The adjustment of IGST (for inter-state trade) at the government level (Centre & various states) will be extremely complex, considering the sheer volume of transactions all over India. A rapid settlement mechanism amongst the States and the Centre will be possible only when there is a strong IT infrastructure and service backbone which captures, processes and exchanges information.
- Secure Information: The government will have strategic control over the GSTN, as it is necessary to keep the information of all taxpayers confidential and secure. The Central Government will have control over the composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, and agreements between the GSTN and other state governments. Also, the shareholding pattern is such that the Government shareholding at 49% is far more than that of any single private institution.
- Sharing of Expenses: The use r charges shall be paid entirely by the Central Government and the State Governments in equal proportion (i.e. 50:50) on behalf of all users. The state share will be then apportioned to individual states, in proportion to the number of taxpayers in the state.

4. What are the procedures to be followed for recovery of arrears arising out of proceedings under the erstwhile law?

Answer:

The Central Government vide Circular No. 42/16/2018-GST dated 13th April, 2018 specified the procedure to be followed for recovery of arrears arising out of proceedings under the erstwhile law is asunder:

Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

- The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).
- The arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).

Recovery of interest, penalty and late fee payable:

- The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash

ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).

- Further, the arrears o f interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).

Payment of central excise duty & service tax on account of returns filed for the past period.
With effect from 1st April 2018, the return filed on portal www.aces.gov.in, the registered person shall be automatically taken to the payment portal i.e. ICEGATE portal for the payment relating to Central Excise / Service Tax return.
Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017
Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per aforesaid procedure.
It is pertinent to mention here, the aforesaid Circular inter alia provides that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT -01). However, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, alternative method of recovery has been provided vide Circular No. 58/32/2018- GST dated 4th September, 2018 this method of recovery, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of Form GSTR -3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of Form G STR-3B.

5. (a) What is the Constitution of National Anti- profiteering Authority?

Answer:

In terms of Rule 122 of the CGST Rules, the Authority shall consist of:

a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
b) four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under the existing law, to be nominated by the Council.

(b) Who can issue summon to give evidence and produce documents in case of Anti profiteering?

Answer:

As per Rule 132, the Director General of Anti- profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing u/s 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil

court under the provisions of the Code of Civil Procedure, 1908. Further, every such inquiry shall be deemed to be a judicial proceedings within the meaning of sec. 193 and 228 of the Indian Penal Code.

6. What is deemed credit as per section 140(3) of the CGST Act?

Answer:

Deemed Credit [u/s 140(3) of CGST Act]:

- Registered person holding stock as on 1 -7-2017 along with VAT and Entry tax paid document on such stock of goods (which suffered tax at first pint of sale in the state and subsequent sale of which are not subject to tax) shall be allowed to avail the input tax credit on such goods held in stock. Thus, in case of credit of VAT and Entry tax, is allowed as ITC equal to the VAT and Entry tax which attracted tax at the first point only.
- If such registered person is not in possession of any document evidencing payment of VAT, then such credit shall be allowed @ 40% of the State tax applicable on such goods and shall be credited after the State tax payable on such supply has been paid.
- The scheme shall be available for six tax periods from the 1-7-2017.
- This benefit is available only when the supplier pass on the benefit of such credit by way of reduced prices to the recipient.
- The stock of goods on which such credit is availed is to be so stored that it can be easily identified by the registered person.

7. Mr. Sen imported goods from Japan on 23.06.2017 for ₹ 5,00,000. Customs duties like BCD ₹ 55,000, CVD ₹ 74,778, Cess ₹ 3,893 and Spl.CVD. of ₹ 27,191 also paid on 28.06.2017. The consignment received by Mr. Sen into his factory on 14.07.2017. The services of Customs Broker and C & F are used for imported inputs. Service Tax ₹ 10,000, SBC of ₹ 500 and KKC of ₹ 500 has been paid on 30.06.2017 along with value of services to the provider of services.

Whether Mr. Sen is eligible for ITC and if yes, for what amount?

Answer:

Statement showing ITC to Mr. Sen under GST

S. No.	Duties and Taxes	Tax Amount in ₹	Remarks
1	BCD	Nil	Not allowed as ITC
2	CVD	74,778	Allowed as ITC under CGST
3	Cess	Nil	Not allowed as ITC
4	Spl. CVD	27,191	Allowed as ITC under CGST
5	Service Tax	10,000	Allowed as ITC under CGST
6	SBC	Nil	Not allowed as ITC
7	KKC	nil	Not allowed as ITC
Total u/s 140(5)		1,11,969	

8. What is concept of anti-profiteering?

Answer:

Anti Profiteering - Section 171
As per section 171(1),

- 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.

9. What is Show Cause Notice (SCN) under GST?

Answer:

The Goods & Service Tax (GST) is payable on self-assessment basis i.e. assessee himself has to determine its tax liability. If the determination of assessee goes wrong i.e. assessee has short paid any taxes or not paid any taxes or has wrong availed and utilized any input tax credit or has erroneously been refunded, etc then, under such circumstances demand would be raised by the GST officials by way of issuing GST notices - to be called as Show cause notices under taxation parlance.

Show cause notice (SCN) is the first stage in any investigation in tax laws. In Goods and Services Tax Act, show cause notice is to be issued before any penalty is levied or demand is raised. SCN is also required to be issued while taking action for payment of Goods and Services tax collected from any person which has not been deposited with the Central Government.

10. What is TRN in GST portal?

Answer:

TRN or Temporary Reference Number is a unique 15-digit reference number that is generated when somebody successfully submit all the fields of PART A (first page) of the new registration application and successfully validate the mobile number and e -mail ID by correctly entering the respective OTPs.

The TRN which is sent via SMS and e -mail, is valid for 15 days from the date of creation.

After TRN is generated, it should be noted down and access PART B of new registration application on the GST Portal in the pre -login mode by entering the TRN.

CUSTOMS LAW

Study Note – 1, 2 & 3

CUSTOMS LAW – BASIC CONCEPTS, CLASSIFICATION UNDER CUSTOMS, TYPES OF DUTIES

Learning Objective:

- ***Customs duty is leviable on import or export. This study note will help to understand the various types of duties leviable as Customs.***

1. Choose the correct alternative and also provide your justification:

i. Road & infrastructure cess on imported goods is levied as a duty of customs @____on motor spirit (petrol) and high speed diesel imported into India

a. **₹ 8 per liter**
b. ₹ 10 per liter
c. ₹ 5 per liter
d. ₹ 1 per liter

Reason :
As per sec. 111 of the Finance Act, 2018, Road & infrastructure cess on imported goods is levied as a duty of customs @ ₹ 8 per liter on motor spirit (petrol) and high speed diesel imported into India for the purpose of financing infrastructure projects.

ii. Territorial water of India extends to_____nautical miles from the base line

a. **12**
b. 24
c. 8
d. 10

Reason :
Territorial water of India extends to 12 nautical miles from the base line

iii. _____ is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged

a. Levy
b. Assessment
c. Collection of tax
d. All of the above

Reason :
Levy is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged

iv. Section_____makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs

a. 10
b. 11
c. 12
d. 13

Reason :
Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs

v. _____ refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery

a. **Derelict**
b. Jetsam
c. Flotsam
d. Wreck

Reason :
Derelict refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery

vi. Anti-dumping duty payable by a SEZ in respect of an import is

a. **Nil**
b. 5% of the customs duty
c. 7.5% of the customs duty
d. 10% of the customs duty

Reason:
No anti -dumping duty is payable by a SEZ, as they are exempted from the same

2. (a) In the context of the Customs Act, what is the meaning of assessment?

Answer:

As per sec. 2(2), "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or und er the Customs Tariff Act or under any other law for the time being in force;
(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self -assessment, re -assessment and any assessment in which the duty assessed is nil;

(b) Explain the legal provisions relating to duty on pilfered goods.

Answer:

Duty on pilfered goods

All imported goods unloaded in a customs area shall remain in the custody of an approved person (being approved by the Commissioner) until they are cleared for home consumption or are warehoused or are transhipped - [Sec. 45(1)]

If any imported goods are pilfered after unloading thereof in a custom area while in the custody of such approved person, then that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer – [Sec. 45(2)]

If any imported goods are pilfered after the unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are re-stored to the importer after pilferage -[Sec. 13]

3. (a) Explain the provision relating to levy of social welfare surcharge.

Answer:

Social Welfare Surcharge (SWS) [Sec. 110 of the Finance Act, 2018]

1. SWS is a duty of Customs levied for the purpose of Union on the goods, specified in the First Schedule to the Customs Tariff Act, being imported into India.
2. SWS has been levied to fulfil the commitment of the Government to provide and finance education, health and social security.

3. SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government u/s 12 of the Customs Act, 1962 and any sum chargeable on such imported goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including:
   a. the safeguard duty referred to in sec. 8B and 8C of the Customs Tariff Act;
   b. the countervailing duty referred to in sec. 9 of the Customs Tariff Act;
   c. the anti-dumping duty referred to in sec. 9A of the Customs Tariff Act;
   d. the Social Welfare Surcharge on imported goods [No SWS on SWS]
4. SWS on IGST and GST Compensation cess has been exempted [Notification No. 11/2018 dated 02-02-2018]
5. The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

(b) Write a note on project imports.

Answer:

Normally, imported goods are classified separately under different tariff headings and assessed to applicable Customs duty, but as a variety of goods are imported for setting up an industrial project their separate classification and valuation for assessment to duty becomes cumbersome. Further, the suppliers of a contracted project, do not value each and every item or parts of machinery which are supplied in stages. Hence, ascertaining values for different items delays assessment leading to demurrage and time and cost overruns for the project.

- Project Imports Scheme is a concept, unique to Indian Customs, wherein all the goods imported for the purpose of setting up of Industrial Project or substantial expansion of existing industrial projects is subjected to single classification under heading 98.01 of Custom Tariff Act, 1975 and subjected to single rate of duty instead of merit assessment of imported goods.
- Under the Scheme of Project Import, the following projects are covered: -
  a. Industrial Plant,
  b. Irrigation Project,
  c. Power Project,
  d. Mining Project,
  e. Project for the exploration for oil or other minerals, and
  f. Such other projects as the central government may, having regard to the economic development of the country notify in the Official Gazette.

4. (a) Write note on safeguard duty leviable u/ s 8B of the Customs Tariff Act.

Answer:

Safeguard duty [Sec. 8B of Customs Tariff Act] Where the Central Government is satisfied that –

a) An article is imported into India in increased quantities; and

b) Such article is imported in such manner which shall cause or is threatening to cause serious injury to the domestic market,

- then it may impose safeguard duty on such imported articles.

Notes:

1. If the following conditions are satisfied then safeguard duty shall not be imposed –
   (a) Such article is originating from a developing country or countries;
   (b) Aggregate import from country or countries shall not exceed –

Where the article is originating from one developing country	The share of imports of that article from that country does not exceed 3% of the total imports of that article into India
Where the article is originating from more than one developing country	The aggregate of the imports from developing countries each with less than 3% does not exceed 9% of the total imports of that article into India

2. Provisional safeguard duty: The Central Government may, pending the enquiry, impose a provisional safeguard duty on the basis of preliminary determination that increased imports have caused or is threatened to cause serious injury to a domestic industry. However, such provisional safeguard duty shall not remain in force for more than 200 days from the date on which it was imposed.
3. Unless and until specifically mentioned in the notification, safeguard duty or provisional safeguard duty shall not apply on articles imported by a 100% export oriented undertaking or a unit in free trade zone or in special economic zone.
4. Safeguard duty shall be ceased to have effect on the expiry of 4 years (unless revoked earlier) from the date of its imposition. However, the Central Government may extend the period of levy to 10 years.

(b) Explain the provision relating to remission of duty on lost, destroyed and abandoned goods.

Answer:

Remission of duty on lost, destroyed or abandoned goods [Sec. 23]

1. Where it is shown to the satisfaction of the Assistant Commissioner or Deputy Commissioner that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption, then the Assistant Commissioner or Deputy Commissioner shall remit the duty on such goods.
2. The owner of any imported goods may, before an order for clearance of the goods for home consumption or an order for permitting the de posit of goods in a warehouse, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.
3. However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law.

5. (a) From the following information, compute the amount of customs duty payable:

(i) Assessable value under customs: ₹ 1,50,000;

(ii) Basic customs duty: 10%;

(iii) IGST: 12%; and

(iv) SWS @ 10%

Answer:

Computation of Customs Duty Payable

Particulars	Details	Amount
Assessable Value under Customs	1,50,000	
Add: Basis Customs Duty [10% of ₹ 1,50,000]	15,000	15,000
	1,65,000	
Add: SWS @ 10% [10% of ₹ 15,000]	1,500	1,500
Value for IGST	1,66,500	16,500
Add: IGST [₹ 1,66,500 x 12%]	19,980	19,980
Total Customs Duty Payable		**36,480**

(b) M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer:

The pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit classifiable under the Customs Tariff Act, 1975. The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24. There will be no question of adding the cost of the software. [CCus.- vs.- Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)]

6. (a) What is meant by Customs Station?

Answer:

As per section 2(13) of the Customs Act, Customs Station means any customs port, customs airport or land customs station.

As per Section 8 of the Customs Act, 1962, the Commissioner of Customs may (i) approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods; (ii) specify the limits of any customs area.

As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962. The receipt/storage/ delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).

CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)]

The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

(b) Mention the circumstances under which no duty will be levied.

Answer:

The circumstances under which no duty will be levied are given below:

(1) No duty will be levied on pilfered goods under section 13 of the Customs Act. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a ware house, then the importer shall not be liable to pay the duty leviable on such goods.

(2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

(3) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where i t is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

(4) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).

(5) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:

- the said goods may not be according to the specification,

- the goods may have been damaged during voyage,
- there might have been breach of contract.

(6) In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice. No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

7. (a) Discuss about Transhipment of Goods (Section 54 of the Customs Act, 1962).

Answer:

Transhipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India.

If the imported goods are intended for transhipment, a 'bill of transhipment' shall be presented to the proper officer by the person -in-charge of conveyance or the person authorized by the exporter to tranship along with a fee of ₹ 20 and also a bond.

If the transhipped goods are covered by an international treaty or a bilateral agreement between India and another country then a 'Declaration of Transhipment' will be presented in the place of Bill of Transhipment.

(b) Which conditions are to be fulfilled to avail exemption from paying duty while exported goods come back for repairs and re-export?

Answer:

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions. The conditions are given below:

(i) The re-importation is for repairs or reconditioning only
(ii) The time limit for re -import should be within 7 years from the date of export. In case of export to Nepal, such time limit is 10 years.
(iii) The time limit for re-export is 6 months from the date of import (extended upto 12 months).
(iv) The importer at the time of importation executes a Bond.
(v) The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.

8. (a) What is Anti- dumping duty?

Answer:

Anti-dumping duty is country specific. It is imposed on imports of a particular country. Dumping exists when a product is exported from one country to another country at an export price which is less than its normal value prevailing in the exporting country. The difference between the normal value and the export price is the dumping margin based on which the Anti Dumping Duty is imposed.

(b) Mr. Suraj an importer imported certain goods CIF value was US $ 30,000 and quantity 1,000 Kgs. Exchange rate was 1 US $ = ₹ 70 on date of presentation of Bill of Entry. Customs Duty rates are —

(i) Basic Customs Duty 12%

(ii) SWS @ 10%.

As per Notification issued by the Government of India, anti -dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US $ 40 per kg and 'landed value' of goods. Compute Customs Duty liability and anti -dumping liability.

Answer:

Part I

Particulars	Amount (₹)
Total CIF Price/Assessable Value US $ 30,000 x ₹ 70	21, 00,000
Basic Customs duty @ 12%	2,52,000
Sub total	23,52,000
Add: SWS 10% on 2,52,000	25,200
Value of imported goods	23,77,200

Total Customs Duty payable is ₹ 2,77,200

Part II

Rate as per Anti Dumping Notification is ₹ 28,00,000

[US $ 40 per kg x 1,000 Kgs. x ₹ 70]

Part III

Computation of anti- dumping duty	₹
Rate as per Anti Dumping Notification	28,00,000
Less: Value of imported goods as computed above	(23,77,200)
Anti Dumping Duty payable	**4,22,800**

Study Note – 4, 5 & 6

VALUATION UNDER CUSTOMS, IMPORT AND EXPORT PROCEDURE, WAREHOUSING

Learning Objective:

- ***This study note will help to understand the various provision relating to valuation under customs and procedure relating to import and export. Among other, sometime goods are required to be stored in warehouse, in this study note one can learn various provision relating to warehousing too.***

1. Choose the correct alternative and also provide your justification:

i. Value of export goods under the Customs Act, 1962 is not determined by —

a. **Market value**
b. Computed value
c. Transaction value
d. Deductive method

Reason :
Value of export goods under the Customs Act, 1962 is determined by transaction value. Further, valuation rules also provide valuation through computed value and deductive value.

ii. Social welfare surcharge is leviable @

a. 4%
b. 3%
c. 2%
d. **10%**

Reason :
Social welfare surcharge is leviable @ 10%

iii. Maximum penalty for non filing of import manifest within time limit is

a. ₹ 10,000
b. ₹ **50,000**
c. ₹ 25,000
d. ₹ 5,000

Reason :
As per sec. 30, maximum penalty for non-filing of import manifest within time limit is ₹ 50,000

iv. Who is liable to pay duty on pilfered goods?

a. **Custodian**
b. Importer
c. Proper Officer
d. None of the above

Reason :
As per sec. 45, custodian is liable to pay duty on pilfered goods.

v. As per sec. 61, where any warehoused goods specified in sec. 61(1)(c) remain in a warehouse beyond a period of days from the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15%

a. 60
b. 90
c. 45
d. 30

Reason :
As per sec. 61, where any warehoused goods specified in sec. 61(1)(c) remain in a warehouse beyond a period of 90 days from the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15%

2. State the provision of sec. 14 regarding valuation of goods.

Answer:

Valuation of goods [Sec. 14]

1. For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the **price actually paid** or payable for the goods when sold for export to India for **delivery** at the **time and place of importation**, or as the case may be, for export from India for delivery at the time and place of exportation, where the **buyer and seller** of the goods are **not related** and **price is the sole consideration** for the sale subject to such other conditions as may be specified in the rules made in this behalf.
2. Such transaction value in the case of imported goods shall include, in addition to the price, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.
3. The rules made in this behalf may provide for:
   (i) the circumstances in which the buyer and the seller shall be deemed to be related;
   (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
   (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the

case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

4. Such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill of export, as the case may be, is presented u/s 50.
   a. " rate of exchange" means the rate of exchange –
      (i) determined by the Board, or
      (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
5. Where the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

3. Write a brief note on the distinction between identical goods and similar goods.

Answer:

Identical goods means imported goods –

(a) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;
(b) produced in the country in which the goods being valued were produced; and
(c) produced by the same person who produced the goods or where no such goods are available, then goods produced by a different manufacturer.

However, identical goods do not include goods imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer o n these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

Similar goods means imported goods –

(a) which although not alike in all respect, have like characteristics and like component materials which enable them to perform the same function. Such goods shall be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade -mark.
(b) produced in the country in which the goods being valued were produced; and
(c) produced by the same person who produced the goods or where no such goods are available, then goods produced by a different manufacturer.

However, similar goods do not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

4. From the data given below relating to import of a machinery, you are required to compute the assessable

value for customs duty purpose:

	(in USD)
FOB value of machinery	**1,10,000**
Air Freight	**24,000**
Expenses incurred by seller for improving the design, at buyer -importer's request	**5,000**
Transit insurance	**Not ascertainable**

Exchange rate 1 USD = ₹ 70

Answer:

Computation of assessable value for customs duty purposes

	(USD)
FOB value of ma chine	1,10,000.00
Add: Expenditure for improvement of design incurred at buyer's request	5,000.00
Customs FOB	1,15,000.00
Air freight [To be restricted to 20% of Customs FOB value]	23,000.00
Insurance @ 1.125% of Customs FOB value	1,293.75
CIF value being assessable value	1,39,293.75
	(Rupees)
Assessable value in INR @ ₹ 70	97,50,563

5. State the provisions relating to stores.

Answer:

Stores means goods for use in a vessel or aircraft including fuel and spare parts and other articles of equipment, whether or not for immediate fittings –Sec. 2(38)
The term 'goods' as defined in sec. 2(22) also include stores. Therefore, restrictions and regulations regarding import or export of any other goods is also applicable on stores. Special provisions regarding stores

Stores shall be warehoused without assessment to duty [Sec. 85]
Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts, without payment of import duty, then the proper officer may permit the goods to be warehoused without assessment to duty.

Transit and transhipment of stores [Sec. 86]
Transit of stores: Any stores imported in a vessel or aircraft may remain on board such vessel or aircraft while it is in India without payment of duty.
Transshipment of stores: With the permission of the proper officer, any stores imported in a vessel or aircraft may, without payment of duty, be transferred to any vessel or aircraft as stores for consumption therein.

Imported stores may be consumed on board a foreign going vessel or aircraft [Sec. 87]

Any imported stores on board a vessel or aircraft may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft.

Supply of import duty paid stores [Sec. 88]

Where any duty paid goods is supplied (i.e. re -exported) to a foreign going vessel or aircraft as stores, then 98% of custom duty paid shall be allowed as 'duty drawback'. However, in case of fuel and lubricating oil, 100% of custom duty paid shall be allowed as 'duty drawback'.

Stores to be free of export duty [Sec. 89]

Goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine. Proper officer shall determine such quantities after considering following factors –

a) the size of the vessel or aircraft;
b) the number of passengers and crew;
c) the length of the voyage or journey on which the vessel or aircraft is about to depart.

Concession in respect of imported stores for the Navy [Sec. 90]

In relation to supply of stores for the use of a ship of the Indian Navy and stores supplied free by Government for the use of the crew of a ship of the Indian Navy (in accordance with their conditions of service), following special provisions shall applicable -

a) It may be supplied without payment of duty.
b) Where any duty paid goods is supplied as stores, then 100% of custom duty paid shall be allowed as 'duty drawback'.

6. State the provisions relating to Coastal Goods.

Answer:

As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Bill of Coastal Goods [Section 92(1) of the Customs Act, 1962]

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

This bill contains the following details:

- Port of landing,
- Port at which the goods are to be delivered and
- Other relevant details

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

Coastal Goods not to be allowed until bill relating thereto is passed by the proper officer (Section 93 of the Customs Act, 1962)

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

Clearance of coastal goods at destination (Section 94 of the Customs Act, 1962)

The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

Master of a coasting vessel to carry an "advice book" (Section 95 of the Customs Act, 1962)

The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book" as per section 95(1).

The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port as per section 95(2).

The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection as per section 95(3).

Loading and unloading of coastal goods at customs port or coastal port only (Section 96 of the Customs Act, 1962)

No coastal goods shall be loaded or unloaded at any port other than a customs port or a coastal port appointed under section 7 of the Customs Act, 1962 for the loading or unloading of such goods.

No coasting vessel to leave without written order (Section 97 of the Customs Act, 1962)

The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

The master of a vessel should fulfil following conditions for getting 'departure permission':

(a) the master of the vessel has to answer all the questions put to him.
(b) all charges and penalties due in respect of that vessel has been paid
(c) no penalty is leviable on master of the vessel under section 116 (i.e. if the goods on a vessel are not landed or short landed, penalty is leviable which is not more than twice the export duty leviable had they been exported).
(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

7. **Write short notes on:**
   a. **Warehousing bond u/s 59**
   b. **Owner's right to deal with warehoused goods**

Answer:

(a) Warehousing Bond [Sec. 59]

1. The importer of any goods in respect of which a bill of entry for warehousing has been presented u/s 46 and assessed to duty u/s 17 or 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself:
   (a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
   (b) to pay, on or before the date specified in the notice of demand, all duties and interest payable u/s 61(2); and
   (c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.
2. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.
3. The importer shall, in addition to the execution of aforesaid bond(s), furnish such security as may be prescribed.
4. Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.
5. Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond and furnish security

b. Owner's right to deal with warehoused goods [Sec. 64]

The owner of any warehoused goods may, after warehousing the same, —

a. inspect the goods;
b. deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
c. sort the goods; or
d. show the goods for sale.

8. (a) Mention the benefits and drawbacks of High Sea Sales transaction.

Answer:

High Sea Sale Transaction means Sale Transaction done when goods are actually at High Sea i.e. during sea transit between Port of Loading and Port of Discharge. The date of transaction (agreement) should be between Bill of lading date and Vessel arrival date at Port of discharge. High Sea Sale is done mostly by Traders, sole Indenting Agent (of the Foreign Supplier) who buys in large quantity and then looks out for buyers at Destination Country.

Benefits of High Sea Sale Transaction are like:

(1) Goods are available at short time to final buyers,
(2) Also instead of buying entire shipment small quantities also can be bought for final buyers and
(3) First buyer can buy large quantity of goods at cheap / reasonable price and sale at best price to final buyers.

Drawbacks of High Sea Sale Transaction are like:
(1) Cumbersome documentation / procedures and
(2) Loading of pricing for Customs assessment.

(b) From the particulars given below, find out the Assessable Value of the imported goods under the Customs Act, 1962.
(i) Cost of the machine at the factory of the exporting country US $ 20,000
(ii) Transport charges incurred by the exporter from his factory to the port for shipment US $ 1000
(iii) Handling charges paid for loading the machine in the ship US $100
(iv) Buying commission paid by the importer US $ 100
(v) Freight charges from exporting country to India US $ 2,000
(vi) Exchange Rate to be considered 1 US $ = ₹ 70

Answer:

Statement showing Assessable Value for imported goods

S.No.	Particulars	Value US $	Workings
(i)	Cost of the machine at the factory of the exporting country	20,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	1000	
(iii)	Handling charges paid for loading the machine in the ship	100	
	FOB Value	21,100	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	237.375	@1.125% on FOB value
(vi)	Freight charges from exporting country to India	2,000	
	CIF Value	23,337.375	
(vii)	**Assessable value**	**₹ 16,33,616**	₹ 70 x US $ 23,337.375

9. Write short notes on:
(a) Interest on warehoused goods
(b) Warehousing without warehousing (Section 49 of the Customs Act, 1962)
(c) One Time Lock (OTL)

Answer:

(a) Interest on warehoused goods

If the importer after warehousing the goods does not clear within 90 days from the date of deposit of the goods, the interest @15% p.a. is to be paid on the value of total duty payable. However in case of Anti Dumping Duty interest has to be paid at the time of importation. If the Anti Dumping Duty is not levied at the time of import however, subsequently imposed on warehoused goods then no such duty is required to be paid by the importer at the time of clearance from the warehouse. Therefore no interest on the part of Anti Dumping duty will be imposed.

No interest is charged, if no customs duty is payable on warehoused goods.

While calculating the interest for number of days delay, the date of payment of duty should also be taken into account.

(b) Warehousing without warehousing (Section 49 of the Customs Act, 1962)

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/ reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage.

If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond.

There is a time limit of 30 days to remove the goods from warehouse where the goods have been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing.

However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

(c) One Time Lock (OTL)

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one -time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL along with date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs/Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo)

Study Note – 7, 8 & 9

DUTY DRAWBACK, BAGGAGE AND POSTAL A RTICLES, ADMINISTRATIVE AND O THER ASPECTS

Learning Objective:

- ***Various incentives are provided by the Government on export. This study note will help to understand various provision relating to duty drawback. Further, in this study, one can also learn various provision relating to baggage etc.***

1. Choose the correct alternative and also provide your justification:

i. Rate of duty on baggage is____ad valorem

a. 30%
b. 33%
c. **35%**
d. 40%

Reason :
Rate of duty on baggage is 35% ad valorem

ii. U/s 74(1) when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, % of such duty shall be re-paid back.

a. 50
b. 98
c. 100
d. 48

Reason :
U/s 74(1) when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be re-paid back.

iii. Which of the following conditions are to be satisfied for the purpose of section 74(1)?

a. the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported

b. the goods are entered for export within two years from the date of payment of duty on the importation thereof

c. Both a & b

d. Either a or b

Reason :

As per sec. 74, both the condition should be satisfied.

iv. As per notification, no drawback of import duty will be allowed in respect of which of the following goods, if they have been used after their importation in India?

a. Wearing Apparel

b. Tea Chests

c. Exposed cinematograph films passed by Board of Film Censors in India

d. **All of the above**

Reason :

No drawback is available on any of the aforesaid goods.

v. GFA will be allowed without payment of duty for bona fide baggage upto_____per persons

a. **₹ 50,000**

b. ₹ 45,000

c. ₹ 35,000

d. ₹ 75,000

Reason:

General Free Allowance of ₹ 50,000 shall be allowed without payment of duty for bona fide baggage.

vi. Once goods are imported from a country outside India into India, such goods need to be cleared from the port within___from the date of import.

(a) **3 working days**

(b) 4 working days

(c) 5 working days

(d) 7 working days

Reason:

Once goods are imported from a country outside India into India, such goods need to be cleared from the port within 3 working days from the date of import. For delay beyond 3 working days the port authorities will charge demurrage. If the delay is from the Customs authorities, then such authorities will issue a certificate called as Detention Certification for bona fide import.

2. (a) Write a brief note on payment of drawback and interest.

Answer:

Payment of drawback and interest [Rule 15]

1. The drawback and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.
2. The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.
3. The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment:
   (a) by cheque, the date of issue of such cheque; or
   (b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

(b) Calculate the amount of duty drawback allowable u/s 74 of the Customs Act, 1962 in following cases;

(i) Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 10 days.

(ii) Manu imported wearing apparel and paid ₹ 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.

(iii) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 5 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 14 months without using them at all.

Answer:

(i) The amount of drawback allowable to Salman will be ₹ 4,40,000 (88% of ₹ 5,00,000).

(ii) Drawback is not allowed on re -export of wearing apparel after use. Hence no drawback shall be allowed to Manu.

(iii) The company shall be eligible for drawback claim @ 65% of the duty. Amount of duty drawback will be ₹ 3,25,00 (65% of ₹ 5,00,000).

3. Write a brief note on following:

a. Statement or declaration to be made on exports other than by post

b. Access to manufactory by the officer to verify drawback claim

Answer:

a. Statement or declaration to be made on exports other than by post [Rule 13]

1. In the case of exports other than by post, the exporters shall at the time of export of the goods –
   a. state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and

if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that:

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central excise authorities.

However, if the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the above provisions, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from this provisions.

b. furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

2. Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that–

a. there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

b. the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

b. Access to manufactory [Rule 11]

Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under drawback rules.

4. (a) Mr. Kapoor visited Germany and brought following goods while returning to India:

(i) The personal effects like cloths, etc., valued at ₹35,000.

(ii) Mobile bought for ₹46,000

(iii) A laptop bought for ₹ 95,000

(iv) 1 litre of liquor bought for ₹ 1,600

(v) A new camera bought for ₹ 47,400

What is the amount of customs duty payable?

Answer:

Computation of Customs Duty Payable by Mr. Kapoor

Particulars	Amount
Personal effects (exempt) Mobile Laptop (exempt) 1 liter of liquor Camera	– 46,000 – 1,600 47,400
Total Value of dutiable goods	95,000
Less: General Free Allowance (GFA)	50,000
Taxable Value	45,000
Customs Duty payable @ 38.5%	17,325

(b) Briefly discuss the provision relating to date for the purpose of determination of rate of duty and tariff valuation in respect of goods imported or exported by post or courier.

Answer:

Rate of duty and tariff valuation in respect of goods imported or exported by post or courier [Sec. 83]

- **Import:** The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the courier authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. However, if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.
- **Export:** The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the courier authorities for exportation.

Regulations regarding goods imported or to be exported by post or courier [Sec. 84]

The Board may make regulations providing for –

a. the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;
b. the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;
c. the transit or transhipment of goods imported by post or courier, from one customs station to another or to a place outside India.

5. A person makes an unauthorized import of goods liable to confiscation. The value of those goods as computed by the customs officer is ₹ 20 lakhs (exclusive of basic customs duty @12%). You are required to compute penalty under Section 112 of the Customs Act, 1962 from the following independent cases:

(a) if imported goods are prohibited goods (accepted his fraud after 30 days from the date of receipt of order). Whether your answer is different if accepted his fraud within 30 days from the date of show cause notice.

(b) if imported goods are non-prohibited goods (duty and interest paid within 30 days of receipt of order under section 112(b)(ii) of Customs Act, 1962). Whether your answer is different if duty and interest has been paid within 30 days of receipt of show cause notice.

(c) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. non-prohibited goods)

(d) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. prohibited goods).

Answer:

(a) Penalty = ₹ 20 Lakhs
₹ 5,000 or ₹ 20 lakhs whichever is higher.
If duty and interest paid within 30 days of SCN:
Reduced penalty u/s 28(5) = ₹ 3 Lakhs (i.e. ₹ 20 L x 15%)

(b) Penalty = ₹ 6,180 (i.e. 0.2472 lakhs x 25%)
Working note: ₹ 5,000 or ₹ 0.2472 lakhs whichever is higher (i.e. ₹ 20 lakhs x 12.36% x 10%)
If duty and interest paid within 30 days of RECEIPT OF ORDER, then reduced penalty is 25% of penalty.
If duty and interest has been paid within 30 days of receipt of show cause notice then penalty is nil.

(c) Penalty = ₹ 5 Lakhs
(i) ₹ 2.472 lakhs
(i.e. ₹ 20 Lakhs x 12.36%)
(ii) ₹ 5 lakhs (i.e. 20 – 15)
whichever is higher
(iii) ₹ 5,000
Therefore, penalty = ₹5 lakhs

(d) Penalty = ₹ 20 lakhs
whichever is higher
(i) ₹ 20 lakhs
(ii) ₹ 20 lakhs – ₹ 15 lakhs = ₹ 5 lakhs.
(iii) ₹ 5,000

6 (a) Write short note on Import General Manifest.

Answer:

It is basically a document necessarily carried by the Person in charge along with conveyance. It is a very important document without which customs authorities not allowed to grant inward entry to the vessel.

Features of Import General Manifest:

- Person-in-charge of Vessel, Aircraft or Vehicle has to submit Import General Manifest.
- The IGM in case of a vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft.

- In case import is through a vehicle, the IGM (so called Import Report) has to be submitted within 12 hours of arrival at the Customs Station.
- Penalty up to ₹ 50,000 can be imposed on the person-in-charge who is responsible for delay in submission of Report or Manifest.
- If the customs station equipped electronically then IGM can be submitted electronically through floppy.
- Amendment can be done to Import General Manifest if the changes do not amount to illegal import.

(b) What are the export incentives available to the exporter in lieu of duty drawback?

Answer:

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence);

The Duty Free Replenishment Certificate (DFRC) Scheme;

- The Export Promotion Capital Goods Scheme (EPCG);
- Duty Exemption Pass Book Scheme (DEPBscheme);
- MEIS & SEIS, EPCG

7. (a) With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

(i) What is the time limit for re-exportation of goods as such?

(ii) What is the rate of duty drawback if the goods are exported without use?

(iii) Is duty drawback allowed on re-export of wearing apparel without use?

Answer:

(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.
This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.

(b) Which documents are to be filed for claiming of duty drawback on re - export?

Answer:

As per Rule 5(2) of the Re- export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re -export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

8. (a) X Ltd. has exported following goods:
Product P, FOB value worth ₹ 1,00,000 and the rate of duty drawback on such export of goods is 0.75%.
Product Q, FOB value worth ₹ 10,000 and the rate of duty drawback on such export of goods is 2%.
Will X Ltd. be entitled to any duty drawback?

Answer:

Duty drawback on product P allowed is ₹ 750 (i.e. 1,00,000 x 0.75%), since amount is more than ₹ 500. Duty drawback on product Q is allowed, because the amount of duty drawback is ₹ 200 (which is more than ₹ 50).

(b) Discuss about Export Promotion Capital Goods Scheme (EPCG).

Answer:

The Export Promotion Capital Goods Scheme enables for exporters to procure capital goods at concessional rate of duty. The exporters have to fulfil the export obligation within the prescribed period. The manufacturers, Exporters and Merchant Exporters are eligible to avail of this Scheme.

Both new and second hand capital good may be imported. Second hand capital goods at permitted subject to the condition that such goods have a minimum of residual life of 5 years and the importer furnishing to the customs at the time of clearance of goods a self declaration to the effect that the second hand capital goods being imported have a minimum residual life of five years in the prescribed form.

Licences are issued, under this scheme by the DGFT or his regional officers depending upon the value of the licence subject to execution of legal undertaking and bank guarantee by them undertaking among other things to fulfil their export obligation within the specified period.

9. Write short notes on:
(a) Negative List of Duty Drawback
(b) Provisional Assessment of Duty
(c) Boat Note

Answer:

(a) Negative List of Duty Drawback

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

a. In respect of any goods, the market price of which is less than the amount of drawback due thereon,
b. If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back intoIndia.
c. Duty drawback is not allowed if t he exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
d. If the sale proceeds not received within the time period allowed by Reserve Bank of India.
e. Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
f. Drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]
g. Duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of marketvalue.
h. No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ₹ 500 /- or it is 1% or more of the FOB value of export.

(b) Provisional Assessment of Duty

An importer o r exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or export goods as the case may be and he can request to the Customs authorities to assess the duty liability on provisional basis. Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter [Section 18 of the Customs Act, 1962].

Provisional assessment can be granted in the following three situations:

(i) An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
(ii) Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
(iii) Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

(c) Boat Note

In India we have certain ports where the ships cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in a small cargo (i.e. it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer.

The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and transshipment cargo.

Study Note – 10, 11 & 12

CUSTOMS (Import of Goods at concessional Rate of Duty) RULE 2017, SEARCH, SEIZURE, CONFISCATION AND MISCELLANEOUS PROVISIONS, COMPREHENSIVE ISSUES UNDER CUSTOMS

Learning Objective:

- ***This study note will help to understand the various advance concepts like recovery, appeals and revisions and various provision relating to search, seizure, etc.***

1. Choose the correct alternative and also provide your justification:

i. Any person aggrieved by any order passed by a proper officer, lower in rank than Principal Commissioner or Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) within days from the date of the communication of the order to him.

a. 30
b. 60
c. 90
d. 120

Reason :
As per sec. 128, any person aggrieved by any order passed by a proper officer, lower in rank than Principal Commissioner or Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) within 60 days from the date of the communication of the order to him.

ii. What is the fee payable for obtaining advance ruling?

a. ₹ 10,000
b. ₹ 5,000
c. ₹ 500
d. ₹ 2,000

Reason :
The application for advance ruling shall be accompanied by a fee of ₹ 10,000

iii. What is the capital punishment u/s 132 for false declaration, documents, etc.

a. **Imprisonment for a term which may extend to 2 years**
b. Imprisonment for a term which may extend to 5 years
c. Imprisonment for a term which may extend to 1 year
d. Imprisonment for a term which m ay extend to 6 months

Reason :

As per sec. 132, whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

iv. An application for revision u/s 129DD shall be made within _____ from the date of communication of the order to the applicant.

a. 30 days
b. 12 months
c. 1 month
d. **3 months**

Reason :

An application for revision u/s 129DD shall be made within 3 months from the date of communication of the order to the applicant.

2. (a) Discuss the provision relating to Re-export or clearance of unutilised or defective goods imported following the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Answer:

Re-export or clearance of unutilised or defective goods [Rule 7 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017]

1. The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re -export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

2. The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued u/s 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(b) State the provision relating to maintenance of records and giving information regarding receipt of imported goods where goods are intended to import following the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Answer:

Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]

1. The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

2. The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

3. The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the 10thday of the following quarter.

3. (a) Vishal has made an unauthorised import of 1,000 pieces of a product. Other particulars are as under:

Total assessable value	**:**	**₹ 5,00,000**
Total customs duty payable (all)	**:**	**₹1,20,000**
Market price in India	**:**	**₹ 800 per piece**

Customs authorities have confiscated the said goods and importer has been given an option to get the said goods released on payment of a fin e equal to 50% of margin of profit.

Compute –

(i) amount of fine payable; and

(ii) maximum amount of fine u/s 125 of the Customs Act, 1962.

Answer:

Computation of amount of fine

Assessable value of goods	₹ 5,00,000
Add: Customs Duty	₹ 1,20,000
Total Imported Cost [A]	₹ 6,20,000
Market Value (₹ 800 x 1000) [B]	₹ 8,00,000
Margin of Profit [C = B – A]	₹ 1,80,000
Fine [50% of C]	₹ 90,000

As per sec. 125, fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. Thus, fine payable u/s 125 cannot exceed the following:

Market Value of goods	₹ 8,00,000
Less: Duty	₹ 1,20,000
Maximum Fine u/s 125	₹ 6,80,000

(b) Discuss the penalty u/s 116 for not accounting for goods under the Customs Act,1962.

Answer:

Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

Quantum of penalty under section 116:

Imported goods:	**Exported goods**
Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported.	Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

4. Write Short Notes on the following:

(a) Issue of show cause notice before confiscation of goods, etc. u/s 124

(b) Rebate of duty

(c) Remission of duty

(d) Refund of duty

Answer:

(a) Issue of show cause notice before confiscation of goods, etc. [Sec. 124]

No order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person –

- is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein;
- and is given a reasonable opportunity of being heard in the matter

Note

- The notice and the representation may, at the request of the person concerned be oral.
- The proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

(b) Rebate of duty - It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier.

For an example: Rebate of duty can be under stood as duty draw back.

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

(c) Remission of duty - It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax.

For an example: Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).

(d) Refund of duty – It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund.

For an example: Duty paid on exempted goods is qualify for refund

5. Describe the cases where goods being exported are liable to confiscation u/s 113 of the Customs Act 1962.

Answer:

The following export goods shall be liable to confiscation u/s 113: -

a. any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
b. any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued u/ 7(c) for the export of such goods;

c. any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
d. any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
e. any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;
f. any goods which are loaded or attempted to be loaded in contravention of the provisions of sec. 33 or sec. 34;
g. any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
h. any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made u/s 77;
i. any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made u/s 77;
j. any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback u/s 75;
k. any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback u/s 74;
l. any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
m. any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out t he purposes of that Chapter have been contravened.

6. (a) What are the mandatory pre-deposit for entertaining an appeal by CESTAT?

Answer:

Mandatory pre-deposit for entertaining appeal (w.e.f. 6-8-2014): –

Section 129E of the Customs Act, 1962, as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that Commissioner (Appeals) or CESTAT shall not **'entertain'** appeal unless specified pre-deposit of duty or penalty is made.

The pre-deposit is as follows –

(a) 7.5% if appeal is filed before Commissioner (Appeals)
(b) 7.5% if appeal is filed before CESTAT against order of Principal Commissioner/ Commissioner as adjudicating authority
(c) 10% if appeal is filed before CESTAT against order of Commissioner (Appeals).

Note: Maximum amount of pre-deposit is ₹ 10 crores.

The aforesaid percentage is to be calculated as follows –

(i) if both duty and penalty is confirmed, then the percentage (7.5% or 10%) is only of the duty or service tax.

(ii) if only penalty is imposed, then the percentage (7.5% or 10%) is of the penalty.

(b) What are the modes of service of notice as stated u/ s 153?

Answer:

Modes for service of notice, order, etc. [Sec. 153]

1. An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes:
   a. by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
   b. by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
   c. by sending it to the e -mail address as provided by the person to whom it is issued, or to the e - mail address available in any official correspondence of such person;
   d. by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
   e. by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice boar d of the office or uploading on the official website, if any.
2. Every order, decision, 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 or uploaded
3. When such order, decision, 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.

7. Explain the provisions relating to applicability of advance ruling u/s 28J.

Answer:

Applicability of advance ruling [Sec. 28J]

1. The advance ruling pronounced by the Authority under section 28-I shall be binding only–
   a. on the applicant who had sought it;
   b. in respect of any matter for which it has been obtained;
   c. on the Principal Commissioner of Customs or Commissioner of Customs, and the customs

authorities subordinate to him, in respect of the applicant.

The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

8. (a) What is the difference between Seizure of Goods and Confiscation of Goods?

Answer:

The term seizure meant to take possession o f the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (i.e. losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

(b) Bimal, a non -resident intends to provide a taxable service under a joint venture in collaboration with a non-resident, but has entertained some doubts about its valuation.
Akash, Bimal's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Bimal proposes to follow the same ruling in his case. Bimal has sought your advice as his consultant whether he could follow the ruling given in the case of Akash. Explain with reasons.

Answer:

An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Bimal cannot make use of the advance ruling pronounced in the identical case of his friend, Akash. Bimal should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of ₹ 2,500.

9. (a) What is the difference between Cognizable Offence and Non - cognizable Offence?

Answer:

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate).

Non-cognizable offence means offences under Customs were a police officer cannot investigate cases without the order of a Magistrate.

(b) Discuss about the powers of Settlement Commission to grant immunity from prosecution and penalty.

Answer:

The Settlement Commission can grant immunity from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and c o -operated with the Commission.

If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn.

If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

FOREIGN TRADE POLICY

FOREIGN TRADE POLICY 2015 - 2020

Learning Objective:

- ***This study note will help to understand the various provisions relating to indirect tax in foreign trade policy.***

1. Choose the correct alternative and also provide your justification:

i. One of the following capital goods is ineligible for the purpose of EPCG

a. **Second hand capital goods**
b. Computer software systems
c. Both (a) and (b)
d. None of the above

Reason :
Second hand capital goods is ineligible

ii. Import under EPCG Scheme shall be subject to an export obligation equivalent to_____times of duties, taxes and cess saved on capital goods

a. **6**
b. 5
c. 10
d. 8

Reason :
Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods

iii. Only projects having a minimum investment of ₹ _____ in plant & machinery shall be considered for establishment as EOUs

a. 10 Crore
b. 50 lakhs
c. 5 Crore
d. 1 Crore

Reason :
Only projects having a minimum investment of ₹ 1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP/STP/BTP and EOUs in Handicrafts/Agriculture/Floriculture/Aquaculture/Animal Husbandry/ Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criteria.

iv. Under Foreign Trade Policy export and import goods are broadly categorized. Which of the following statements is correct?

a. Free i.e. general goods are allowed to be imported without payment of any customs duty.
b. Restricted goods are banned and not allowed to import or export.
c. Restricted goods are allowed to be imported only if used for re-export.
d. Restricted goods are allowed to be imported or exported only with authorization.

Reason:
Restricted goods are allowed to be imported or exported only with authorization as per FTP – 2015 – 2020.

v. Minimum value addition required to be achieved under Advance Authorization scheme is:

(a) **15%**
(b) 20%
(c) 50%
(d) None of the above

Reason:
Minimum value addition required to be achieved under Advance Authorization scheme is 15%. However, separate value addition is notified for specified products.

2. State the features of FTP.

Answer:

Features of FTP are as under:

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
   a. Free (i.e. general goods freely import or export without any authorization).
   b. Restricted (i.e. goods allowed to import or export only with authorization).
   c. Prohibited (i.e. goods are not allowed to import or export)
3. There are restrictions on exports and imports for various strategic, health, and other reasons.
4. Exports are promoted through various promotional schemes.
5. There should be no taxes on exports.
6. 6. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
7. EOU'S and SEZ units are exempted from payment of taxes.
8. Deemed exports concept introduced.
9. Duty credit scrip's schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

3. Cases when MEIS duty credit scrip's are not allowed under FTP.

Answer:

MEIS duty credit scrip's are not allowed in the following cases:

(1) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption
(2) Supplies made from DTA units to SEZ units
(3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India
(4) Deemed Exports
(5) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units
(6) Export products which are subject to Minimum export price or export duty
(7) Ores and concentrates of all types and in all formations
(8) Cereals of all types
(9) Sugar of all types and all forms unless specifically notified.
(10) Crude / petroleum oil and crude / primary and base products of all types and all formulations
(11) Export of milk and milk products and meat and meat products unless specifically notified.

4. State capital goods eligible and not eligible for import under EPCG Scheme?

Answer:

Eligible capital goods for import under EPCG Scheme:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories
4. Capital goods for Project Imports notified by CBEC.

Ineligible capital goods for import under EPCG Scheme:

1. Second hand capital goods
2. Power Generator Sets

5. What is the meaning of status holder? What is the average export value to be achieved to become the status holder?

Answer:

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.

Status Category

Status Category	**Export Performance FOB / FOR (as converted) Value (in US $ million)**
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

For granting status, export performance is necessary in at least 2 out of 4 years.

6. What are the benefits to EOU units?

Answer:

Benefits to EOU units:

(i) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
(ii) Export proceeds will be realized within 9 months.
(iii) Units will be allowed to retain 100% of its export earnings in the EEFC account.
(iv) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfilment of required conditions.
(v) 100% FDI investment permitted through automatic route similar to SEZ units.

7. What are the benefits of deemed exports?

Answer:

Deemed exports shall be eligible for any/all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

a. Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
b. Deemed Export Drawback for BCD.
c. Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

8. (a) What is meant by Third Party Export?

Answer:

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third party exports shall be allowed under Foreign Trade Policy.

(b) Discuss about the benefits of Status Holder.

Answer:

Business leaders who have excelled in international trade and have successfully contributed to country's foreign trade are proposed to be recognized, as Status Holders and given special treatment and privileges to facilitate their trade transactions, in order to reduce their transaction costs and time.

The benefits of Status Holder are given below:

a. Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
b. Fixation of Input Output Norms (SION) on priority by the Norms Committee i.e. within 60 days.
c. Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels by way of e-BRC by DGFT.
d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
e. Two Star Export Houses and above are permitted to establish export warehouses.
f. Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBIC.
g. Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹ 10 lakh (w.e.f. 23rd Aug 2017 ₹ 1 Crore) or 2% of average annual export realization during preceding 3 licensing years, whichever is higher.

9. (a) During F.Y. 2019-20 Supreme Pvt. Ltd. has made Exports of "Safety Valves" coming under Chapter Heading 8481.
Country of Export – USA & UK.
Realised FOB value of exports in free foreign exchange : ₹ 60 Crore
FOB value of exports as given in the Shipping Bills in free foreign exchange (Covered in ₹): ₹ 65 Crore. As per Appendix 3B of Foreign Trade Policy 2015 -20, reward for Export of Safety Valves to USA & UK is 3%.

Find the Duty Credit Scrip or MEIS reward available to Supreme Pvt. Ltd.

Answer:

Realised FOB value of exports = ₹ 60 crore or
FOB value of exports = ₹ 65 crore (as given in the Shipping Bills) Whichever is lower.
Therefore MEIS Reward available to Supreme Pvt. Ltd. for F.Y. 2019- 20 would be ₹ 1.8 Crore (i.e. ₹ 60 Crore x 3%).

(b) Write a short note on Board of Trade.

Answer:

Board of Trade has been constituted to advise Government on Policy measures like:

- Improve exports,
- Review export performance,
- Review policy and procedures for import and exports and
- Examine issues relevant for promotion of India's foreign trade.

Commerce and Industry Minister will be the Chairman of the BOT. Government shall also be nominated up to 25 persons. Board of Trade will meet at least once every quarter.

10. (a) What is Standard Input Output Norms? Mention the basic requirements for fixation/modification of Standard Input Output Norms.

Answer:

Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook, and is approved by its Boards of Directors.

An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant -exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

For fixation / modification of Standard Input Output Norms (SION) following details are required:

(i) Technical Details of the export product as per the details given in Appendix 33.

(ii) Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.

(iii) Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in serial no 3 of sub section XII, duly certified by the Chartered accountant / Cost Accountant / Jurisdictional Excise Authority.

(b) Alex Pvt. Ltd., (One Star Export House) wanted to export general goods (i.e. export freely without any restriction or prohibition) worth ₹ 30 lakh on free of cost basis for export promotion to USA.

Particulars	Current Year in (From April - Oct)	Previous Year 1	Previous Year 2	Previous Year 3
Annual Export realization (INR)	**10,12,25,000**	**1,50,00,000**	**11,70,00,000**	**8,50,70,000**

Whether Alex Pvt. Ltd., can export goods on free of cost basis, if so what amount. Advice.

Answer:

Alex Pvt. Ltd. being a status holder can export freely exportable items on free of cost basis for export promotion maximum of ₹ 14,47,133.

Therefore, maximum value of export at free of cost is ₹ 14,47,133.

Working note:

[(1,50,00,000+ 11,70,00,000 + 8,50 ,70,000) / 3] x 2% = ₹ 14,47,133

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