

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any **five** questions from the remaining **six** questions.

Question 1

- (a) Quanto Ltd. is not required to register under CGST Act, 2017, but it wishes to obtain voluntary registration, so it applied for voluntary registration on 17th September, 2017 and registration certificate has been granted to it on 25th September, 2017. The CGST and SGST liability for the month of September, 2017 is ₹ 24,000 each.

Quanto Ltd. provides the following information of inputs and capital goods held in stock on 24th September, 2017. It is not engaged in making inter-State outward taxable supplies.

Particulars	Amount(₹)
Input procured on 02-09-2017 lying in stock	
- CGST @ 6%	4,500
- SGST @ 6%	4,500
Input received- on 21-07-2017 contained in semi-finished goods held in stock :	
- CGST @ 6%	7,500
- SGST @ 6%	7,500
Value of inputs contained in finished goods held in stock ₹ 2,00,000 were procured on 19-09-2016	
- IGST @ 18%	36,000
Inputs valued at ₹ 50,000 procured on 13-09-2017 lying in stock:	
- IGST @ 18%	9,000
Capital goods procured on 12-09-2017	
- CGST @ 6%	12,000
- SGST @ 6%	12,000

You are required to compute the amount of tax to be paid in cash by Quanto Ltd. for the month of September, 2017.

You are also required to mention reasons for treatment of all above items. **(10 Marks)**

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the position of GST law as amended by the significant notifications/circulars issued till 30th April, 2018 and customs law as amended by the Finance Act, 2018 and notifications/circulars issued up to 30.04.2018 which were relevant for November, 2018 examinations.

- (b) Sharma Carriers is a Good Transport Agency engaged in transportation of goods by road. As per the general business practice, Sharma carriers also provides intermediary and ancillary services like loading /unloading, packing/unpacking, transshipment and temporary warehousing in relation to transportation of goods by road.

With reference to the provisions of GST law, analyse whether such services are to be treated as part of the GTA services, being a composite supply or as mixed supply.

(5 Marks)

- (c) A Malaysian company donated 1,000 metric tons of palm oil to a charitable trust in India for free distribution to the poor and the needy citizens. The trust in India had to meet the expenditure towards freight and insurance only which came to US \$ 20 per metric ton. The Custom Department found that at or about the same time of importation of this consignment, there were following imports of palm oil of Malaysian origin into India.

Sl. No.	Quantity imported in metric tons	Unit price in US Dollars (CIF)
1.	500	400
2.	900	350
3.	780	300

The rate of exchange on the relevant date was 1 US \$ = ₹ 65 and the rate of customs duty was 20% ad valorem. Calculate the amount of customs duty payable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations. It would be sufficient if only basic customs duty is calculated.

(5 Marks)

Answer

- (a) **Computation of net GST liability (to be paid in cash) by Quanto Ltd. for the month of September, 2017**

Particulars	CGST (Rs)	SGST (Rs)
Output tax liability for the month	24,000	24,000
Less: Input tax credit (ITC) [Refer note-2 below]	12,000	<u>12,000</u>
	<u>9,000 (IGST)</u>	
Net GST payable (in cash)	3,000	12,000

Notes:

- Credit of IGST shall be utilized towards payment of IGST, CGST and SGST in that order. Since Quanto Ltd. does not make any inter-State supply, credit of IGST has been utilized towards payment of CGST [Section 49(5) of the CGST Act, 2017].
- As per section 18(1)(b) of the CGST Act, 2017-

A person who takes voluntary registration is entitled to take credit of input tax in respect of:

- inputs held in stock and
- inputs contained in semi-finished/ finished goods held in stock

on the day immediately preceding the date of grant of registration.

However, he cannot take ITC in respect of capital goods held on the day immediately preceding the date of grant of registration.

ITC on inputs needs to be availed within 1 year from the date of issue of the invoice by the supplier [Section 18(2) of the CGST Act, 2017].

In this case, since Quanto Ltd. has been granted voluntary registration on 25.09.2017, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24.09.2017. In view of the said provisions, eligible ITC for Quanto Ltd. is computed as follows:

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Inputs held in stock since 02.09.2017	4,500	4,500	
Inputs received on 21.07.2017 contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19.09.2016 ¹ [Procured prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13.09.2017			9,000
Capital goods procured on 12.09.2017	Nil	Nil	
Total ITC	12,000	12,000	9,000

- (b) Composite supply means 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 [Section 2(30) of the CGST Act, 2017].

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 [Section 2(74) of the CGST Act, 2017].

¹ It has been assumed that invoice for the said goods is also dated 19.09.2016.

The various intermediary and ancillary services provided by GTA are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by Sharma Carriers, such service would form part of the GTA service, and thus will be composite supply, and not a mixed supply even though a single price is charged for the supply.

Further, if such incidental services are provided as separate services and are billed separately, whether in the same invoice or separate invoices, they will be treated as separate supply and not composite supply and there being no single price, the supply will also not be treated as mixed supply – in terms of Q. 6 of the CBIC FAQs on Transport & Logistics².

- (c) (i) In the given case, there is no transaction value for the subject goods. Therefore, value has to be determined based on the transaction value of contemporaneous imports of identical/similar goods in accordance with rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

In the three imports given during the relevant time, the goods are identical in description and of the same country of origin.

Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued.

The consignment of 500 tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 2 consignments will only be relevant.

If more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods.

Accordingly, the unit price of the consignment under valuation would be US \$ 300 per metric tonne.

² In case where incidental services are provided as separate services and are billed separately, whether in the same invoice or separate invoices, it is also possible to take a view that they need not be treated as separate supply, but part of composite supply. Further, there being no single price, the supply will not be treated as mixed supply.

Computation of amount of duty payable

Particulars	
CIF value of 1000 metric tonnes [1,000 x \$ 300]	US \$ 3,00,000
CIF Value (in Rupees) at the exchange rate of \$ 1 = ₹ 65	1,95,00,000
Assessable value	<u>1,95,00,000</u>
Customs duty @ 20%	3,90,000

Question 2

- (a) With the help of information given below in respect of a manufacturer for the month of September, 2017, calculate eligible input tax credit for the month and also calculate the amount of ITC to be reversed in September, 2017 and October, 2017. There is no carry forward credit or reversal requirement. Only the current month's information is to be considered for calculation purposes.

S. No.	Particulars	Amount in ₹
1.	Outward supply of taxable goods	70,000
2.	Outward supply of exempted goods	40,000
	Total Turnover	1,10,000
3.	Inward supplies	GST paid (₹)
	Capital goods purchased which are exclusively used for taxable outward supply	2,000
	Capital goods purchased which are exclusively used for exempted outward supply	1,800
	Capital goods purchased which are used for both taxable and exempted outward supply	4,200

(7 Marks)

- (b) A registered supplier of taxable goods supplied goods valued at ₹ 2,24,000 (inclusive of CGST ₹ 12,000 and SGST ₹ 12,000) to Mohan Ltd. under the forward charge on 15-08-2017 for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15-08-2017. Mohan Ltd. availed credit of ₹ 24,000 on 18-08-2017. But Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail input tax credit on such supply? What are the consequences of such non-payment by Mohan Ltd.?

Discuss input tax credit provisions if Mohan Ltd. makes the payment of ₹ 2,24,000 to the supplier on 18-03-2018.

(5 Marks)

- (c) After visiting USA for a month, Mrs. and Mr. Iyer (Indian residents aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹70,000, used personal effects valued ₹1,40,000 and a personal computer for ₹58,000.

Calculate the custom duty payable by Mrs. & Mr. Iyer, if any.

(4 Marks)

Answer

(a) Computation of eligible ITC and ITC to be reversed

Particulars	₹	ITC (₹)
Capital goods exclusively used for taxable outward supply [Since exclusively used for taxable supply, full ITC is available under rule 43(1)(b) of the CGST Rules, 2017] – [A]		2,000
Capital goods exclusively used for exempted outward supply [Since exclusively used for non-business purposes, ITC is not available under rule 43(1)(a) of the CGST Rules, 2017]		Nil
Capital goods used for both taxable and exempted outward supply -Common credit [B] [Commonly used for taxable and exempt supplies – Rule 43(1)(c) of the CGST Rules, 2017]	4,200	
Common credit for the tax period (month here) = $4,200 \div 60$ [Rule 43(1)(e) of the CGST Rules, 2017]	70	
Common credit attributable to exempt supplies in a month [C] (rounded off) = $(40,000/1,10,000) \times ₹ 70$ [Rule 43(1)(g) of the CGST Rules, 2017]	<u>25.45</u>	
Eligible credit out of common credit for September, 2017 [B] – [C] (rounded off)		<u>4,174.55</u>
Total eligible credit for September, 2017		6,174.55
Amount of ITC to be reversed in September, 2017 [B]		25.45
Amount of ITC to be reversed in October, 2017 [B]		25.45

- (b) As per section 16 of the CGST Act, 2017, Mohan Ltd. is eligible to avail input tax credit (ITC) of the tax paid on inputs received by it on the basis of the invoice issued by the supplier provided other conditions for availing ITC are fulfilled.

Payment of value of the goods along with the tax to the supplier is not a pre-requisite at the time of availing credit, but Mohan Ltd. has to pay the said amount within 180 days from the date of issue of invoice.

If Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier, it has to report the fact of non-payment in the ITC return (GSTR-2³) for the month immediately following the period of 180 days from the date of the issue of the invoice. When such report is made, ITC of ₹ 24,000 will be added to his output tax liability. Mohan Ltd will be required discharge this liability with interest @ 18% p.a. from the date of availing credit till the date when the amount added to the output tax liability [Second proviso to section 16(2) of the CGST Act, 2017 read with rule 37 of the CGST Rules, 2017].

If Mohan Ltd. does not pay the supplier as mentioned above, subject to the provisions of section 126 of the CGST Act, 2017, a general penalty which may extend to ₹ 25,000 may also be levied for such contravention by Mohan Ltd. under section 125 of the CGST Act, 2017].

If Mohan Ltd. makes the payment of ₹ 2,24,000 (Value + tax) to the supplier on 18.03.2018 i.e., after the expiry of 180 days from date of issue of invoice, Mohan Ltd. will have to report the default in the monthly report, add the amount of ITC to his output tax liability and when the payment is made to the supplier, take the credit of ₹ 24,000. The output tax liability added will have to paid with interest @18% for the period from the date of availment of credit till the date of addition of the amount to the output tax liability.

- (c) (1) As per the Baggage Rules, 2016, an Indian resident arriving from an country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-
- (i) Used personal effects and travel souvenirs without any value limit.
 - (ii) Articles [other than certain specified articles] up to a value of ₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].
 - (iii) Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.
- (2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
- (3) (i) Accordingly, there will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Iyer and laptop computer brought by them will be exempt from duty.
- (ii) Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹ 58,000 – ₹ 50,000 = ₹ 8,000.
 - (iii) Effective rate of duty for baggage = 36.05% [including education cess & secondary & higher education cess]
 - (iv) Therefore, total customs duty = ₹ 2,884.

³ Since GSTR-2 is not operational, reporting is done in GSTR 3B.

Question 3

- (a) A makes intra-State supply of goods valued at ₹ 50,000 to B within State of Karnataka. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin.

Assume that the rate of GST chargeable is 18% (CGST 9% plus SGST 9%) and IGST chargeable is 18%. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized, calculate the net tax payable in cash. At each stage of the transaction, indicate which Government will receive the tax paid and to what extent. **(9 Marks)**

- (b) MN Ltd. has two registered business verticals in the State of Haryana. Its aggregate turnover during the previous financial year for both the business verticals was ₹ 62 lakh. It wishes to opt for composition levy for one of the verticals in the current year and wants to continue with registration and pay taxes at the merit rate for the second vertical. Can MN Ltd. do so? Explain with reason. **(3 Marks)**

- (c) Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30,000 in excess of actual drawback on 16-06-2017. A demand for recovery of the same was issued by the Department on 24-08-2017. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2017. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd.

Provide brief reasons for your answer.

(4 Marks)

Answer

- (a) I. **Intra-State supply of goods by A to B**

	₹
Value charged for supply of goods	50,000
Add: CGST @ 9%	4,500
Add: SGST @ 9%	4,500
Total price charged by A from B	59,000

A is the first stage supplier of goods and hence, does not have credit of CGST, SGST or IGST. Thus, the entire CGST (₹ 4,500) & SGST (₹ 4,500) charged will be paid in cash by A to the Central Government and Karnataka Government respectively.

- II. **Inter-State supply of goods by B to X Ltd. – Margin @ 10%⁴**

	₹
Value charged for supply of goods (₹ 50,000 x 110%)	55,000

⁴ It has been logically presumed that 10% margin is on the value of goods (exclusive of taxes).

Add: IGST @ 18%	<u>9,900</u>
Total price charged by B from X Ltd.	64,900

Computation of IGST payable by B to Central Government in cash

	₹
IGST payable	9,900
Less: Credit of CGST	4,500
Less: Credit of SGST	<u>4,500</u>
IGST payable to Central Government in cash	900

Credit of CGST and SGST can be used to pay IGST [Section 49(5) of the CGST Act, 2017]. Karnataka Government will transfer SGST credit of ₹ 4,500 utilised in the payment of IGST to the Central Government.

III. Intra-State supply of goods by X Ltd. to Y

	₹
Value charged for supply of goods (₹ 55,000 x 110%)	60,500
Add: CGST @ 9%	5,445
Add: SGST @ 9%	<u>5,445</u>
Total price charged by X Ltd. from Y	71,390

Computation of CGST and SGST payable by X Ltd in cash

	₹
CGST payable	5,445
Less: Credit of IGST	<u>5,445</u>
CGST payable to Central Government in cash	Nil
SGST payable	5,445
Less: Credit of IGST [₹ 9,900 – ₹ 5,445]	<u>4,455</u>
SGST payable to Telangana Government in cash	<u>990</u>

Credit of IGST can be used to pay IGST, CGST and SGST in that order [Section 49(5) of the CGST Act, 2017]. Central Government will transfer IGST of Rs 4,455 utilised in the payment of SGST to Telangana Government

- (b) As per proviso to section 10(2) of the CGST Act, 2017, where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme unless all such registered persons opt to pay tax under composition scheme.

In the given case, since MN Ltd. has two business verticals (they are not separate entities under Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt for composition levy for only one of the business verticals and pay tax under regular scheme for other business vertical.

(c) Computation of interest chargeable from Abdul Overseas Pvt. Ltd.

Particulars	
Duty drawback erroneously refunded	₹ 30,000
No. of days of delay [17.06.2017 to 16.10.2017] (Refer Note)	122 days
Rate of interest (Refer Note)	15%
Quantum of interest (rounded off) [₹ 30,000 x 122/365 x 15/100]	1,504

Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

Question 4

- (a) A company has entered to an agreement with a customer for the manufacture and supply of cement pipes for their exclusive use. A company manufactured the product but before receiving the inspection certificate, their customer rejected some quantity of goods on the grounds of quality. As per agreement, the rejected quantity will be destroyed in front of the customer and shall not be sold. Examine the issue in the light of statutory provisions and suggest future course of action to the assessee as to whether any liability arises as per the provisions of GST law. **(4 Marks)**

- (b) M/s. Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of M/s. Ranveer Industries in the financial year 2016-17 is ₹70 lakh. It opted for composition levy in the year 2017-18 and paid tax for the quarter ending September, 2017 under composition levy.

The proper officer has levied penalty for wrongly availing the scheme on M/s. Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer.

(4 Marks)

- (c) Y Ltd. exported service valued at US \$ 1,00,000. Supply of service was completed on 15th November 2017. Payment for this service was received on 30th December 2017. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for ₹ 6,00,000 on 31st January, 2018. The refund claim was sanctioned on 30th April, 2018. What is the amount of refund Y Ltd. will get in accordance with law? What is the relevant date and rate of interest as per GST law? **(4 Marks)**

- (d) *An offence case was registered against PQR Ltd. During the course of interrogation and investigation, the managing director of the company deposited ₹ 10 crores towards customs duty liability that may arise. After due process, the Commissioner of Customs adjudicated the case and has confirmed demand for customs duty of ₹ 156.48 crores with interest and has imposed penalty equal to the duty demanded. The company is disputing the entire demand of customs duty and penalty and wants to know how much pre-deposit it has to make for filing the appeal against the order of the Commissioner, if any deposit is to be made.* **(4 Marks)**

Answer

- (a) Section 17 of the CGST Act, 2017 blocks ITC in respect of destroyed goods.

Accordingly, since in the given case the cement pipes have been destroyed, ITC attributable to such pipes will not be allowed [Section 17(5)(h) of the CGST Act, 2017].

Thus, in the given case, if the credit has already been availed, the same will need to be reversed.

- (b) As per section 10 of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore in a State/UT [₹ 75 lakh in case of Special Category States except Jammu and Kashmir and Uttarakhand], may opt for composition scheme.

However, he shall not be eligible to opt for composition scheme if, *inter alia*, he is engaged in making any inter-State outward supplies of goods.

In the given case, since M/s Ranveer Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for composition scheme in FY 2017-18 irrespective of its turnover in the preceding FY.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

- (c) As per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, refund claim admissible to Y Ltd. on account of export of services being a zero-rated supply, is the unutilized ITC of ₹ 6,00,000.

Where the supply of services had been completed prior to the receipt of payment, relevant date is the date of receipt of payment in convertible foreign exchange, i.e. 30th December, 2017 [Explanation to section 54 of the CGST Act, 2017].

As per section 56 of the CGST Act, 2017, where any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application, interest

shall be payable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.

Since in the given case, tax ordered to be refunded is not refunded within 60 days from the date of receipt of application, viz, 31st January, 2018, interest @ 6% p.a. is payable.

- (d) As per section 129E of the Customs Act, 1962, in case of appeal filed against the order of Commissioner, in case where duty and penalty are in dispute, amount of pre-deposit is:

(i) ₹ 11.736 crores [7.5% of the customs duty, viz ₹ 156.48 crores]

or

(ii) ₹ 10 crores,

whichever is less.

= ₹ 10 crores.

Therefore, the amount of pre-deposit in this case will be ₹ 10 crore.

Further, payment made during the course of investigation can be considered as pre-deposit for the purpose of filing the appeal. Since the amount deposited by the managing director during the investigation is ₹ 10 crores, the maximum amount of pre-deposit required for filing the appeal as per law, the company need not make any further pre-deposit for filing the appeal.

Question 5

- (a) *The original adjudicating authority confirmed a demand of GST of ₹42,50,000 with interest and imposed a penalty of ₹4,25,000 in its order dated 1st September, 2017. The assessee filed an appeal before appellate authority challenging the demand as well as penalty. The internal audit party, after an audit of the records of the assessee, submitted a note to the Commissioner that actual amount demanded should have been ₹ 48,50,000. While the issue was pending before the appellate authority, based on the note, the Commissioner stayed the order of the original authority and issued a show cause notice on 15th March, 2018, proposing revision of the order of the original authority and revise the demand on the basis of the audit note. Examine the correctness of the action taken by the Commissioner in accordance with the provisions of GST law.* **(4 Marks)**

- (b) *A show cause notice was issued demanding GST of ₹1,80,180 for the month of July, 2017 on 1st October, 2017. However, adjudicating authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for ₹10,80,180. Assessee seeks your advice.*

What would be your advice if: (a) assessee comes to you after issue of order or (b) a corrigendum revising the amount to ₹10,80,180 on 15th November, 2017, is issued.

(4 Marks)

- (c) Mr. X, registered under GST Act, had made short payment of GST for the month of July 2017.

He does not want a show cause notice to be served on him by proper officer. Advise Mr. X, if :

(i) Short payment of tax is on account of reasons other than fraud

(ii) Short payment of tax is on account of fraud.

(4 Marks)

- (d) On the ground that recovery of duty drawback does not involve levy, assessment and collection of customs duty, Department takes a stand that the Settlement Commission does not have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue under the Customs Act, 1962. Do you agree? Explain with reason.

(4 Marks)

Answer

- (a) As per section 108 of the CGST Act, 2017, Revisional Authority cannot revise an order if, *inter alia*, such order has been subject to an appeal before Appellate Authority or Tribunal or High Court or Supreme Court.

The Revisional Authority may, however, pass an order on any point which has not been raised and decided in an appeal before Appellate Authority/Tribunal/High Court/Supreme Court.

In the given case, the Commissioner wants to revise the order on the point which is the subject matter in the appeal⁵.

Therefore, the Commissioner cannot exercise the power of revision in respect of such order.

- (b) (i) **Advice after issue of order⁶:**

As per section 75(7) of the CGST Act, 2017, *inter alia*, the amount of tax, interest and penalty demanded in the order cannot exceed the amount specified in the notice.

Since, in the given case, the amount of tax demanded in the order exceeds the amount of tax demanded in the show cause notice, the assessee can file an appeal against the adjudication order within the prescribed time limit.

- (ii) **Advice after issue of corrigendum⁷**

Any authority, who has issued, *inter alia*, any notice, may rectify any error which is apparent on the face of record in such notice, *inter alia*, on its own motion within a period of 6 months from the date of issue of such notice except where the rectification

⁵ It has been logically assumed that the revision is on the point which is the subject matter in appeal in the absence of the specific mention of the issue involved.

⁶ It has been assumed that order demanding higher tax has been made, but the rectification of show cause notice has not been done.

⁷ It has been assumed that corrigendum has been issued in respect of show cause notice.

is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission [Section 161 of the CGST Act, 2017].

In the given case, since the corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, the rectification is correct in law. Further, being rectification of a clerical error, the time limit of 6 months will not apply.

Therefore, the assessee should reply to the show cause notice considering the revised amount of demand.

(c) (i) Short payment of tax is on account of reasons other than fraud

As per section 73 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, before the service of notice and inform the proper officer in writing of such payment.

(ii) Short payment of tax is on account of fraud

As per section 74 of the CGST Act, 2017, the show cause notice will not be issued by the proper officer, if Mr. X pays the amount of tax short paid along with interest payable thereon and a penalty equal to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer, before the service of notice and inform the proper officer in writing of such payment.

- (d)** This issue has been addressed by the High Court in case of *Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)*. The High Court held that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act.

Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

In view of the above ruling, High Court did not agree with the stand of the Department in the given case.

Question 6

- (a)** *Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10-04-2018 and were received by the job worker on 15-04-2018. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacturers. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacturers.*

What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal? (6 Marks)

- (b) *Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do the relevant provisions become inapplicable in respect of individuals concerned with the trust?*

(4 Marks)

OR

Department initiated prosecution proceedings against a taxable person who had evaded GST of ₹4.2 crores. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of ₹2.5 crores as compounding amount. Indicate the minimum and maximum limits for compounding amount. Is the amount fixed by the Commissioner in this case within the limits prescribed under the law? What is the consequence of the decision of the commissioner allowing the request for compounding the offence?

(4 Marks)

- (c) *Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST / IGST / SGST Act. (2 Marks)*
- (d) *Briefly explain the provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete / unfinished articles.*

(4 Marks)

Answer

- (a) As per section 19(5) of the CGST Act, 2017, the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) of the CGST Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, 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 received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15.04.2018 (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15.04.2018 and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7) of the CGST Act, 2017].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

- (b) Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Further, where it is proved that the offence committed by the trust has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of any other individual concerned with the trust,

he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The relevant provisions will become inapplicable in respect of individuals concerned with the trust, if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.

OR

- (b) As per section 138 of the CGST Act, 2017,

the minimum limit for compounding amount is higher of the following amounts:-

- (i) 50% of tax involved, or
- (ii) ₹ 10,000, and

the upper limit for compounding amount is higher of the following amounts: -

- (i) 150% of tax involved or
- (ii) ₹ 30,000

In the present case, the minimum limit for compounding is ₹ 2.10 crores. [₹ 2.10 crores (50% x ₹ 4.2 crores) or ₹ 10,000, whichever is higher].

The maximum limit for compounding in this case is ₹ 6.3 crores [₹ 6.3 crore (150% x ₹ 4.2 crores) or ₹ 30,000, whichever is higher].

Thus, the amount fixed by the Commissioner at ₹ 2.5 crores is within the limits prescribed under the law.

If the taxable person pays the compounding amount decided by the Commissioner, no further proceedings shall be initiated under GST law against the accused person in respect

of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

- (c) Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing. Such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner [Section 90 of the CGST Act, 2017].

- (d) The provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles are as under:-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Reference to an article will also include the article complete or finished (or failing to be classified as complete or finished) presented un-assembled or dis-assembled.

Question 7

- (a) *How many types of audit are prescribed under GST Act. Briefly explain each one of them.*
(5 Marks)
- (b) *Discuss three supplies which have been notified as deemed exports under section 147 of CGST Act, 2017.*
(3 Marks)
- (c) *What are the conditions applicable to Input Service Distributor to distribute the credit?*
(4 Marks)
- (d) *Which exporters are eligible for Export Promotion Capital Goods Scheme as per Foreign Trade Policy 2015-20? Also describe which capital goods are eligible for import under this scheme?*
(4 Marks)

Answer

- (a) (i) There are three types of audit prescribed under GST Act(s) as explained below:
Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a Chartered Accountant or a Cost Accountant [Section 35(5) of the CGST Act, 2017].
- (ii) **Audit by Department:** The Commissioner or any officer of CGST/SGST/UTGST authorized by him by a general or specific order, may conduct audit of any registered person in the prescribed manner and frequency [Section 65 of the CGST Act, 2017].

- (iii) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, Department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, it may order special audit by Chartered Accountant or Cost Accountant as nominated by it [Section 66 of the CGST Act, 2017].
- (b) The following supplies have been notified as deemed exports under section 147 of the CGST Act, 2017:
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 notified bank/Public Sector Undertaking against Advance Authorisation.
- Note:** Any three points may be mentioned.
- (c) The following conditions are applicable to Input Service Distributor to distribute the input tax credit (ITC):-
- (i) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.
 - (ii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.
 - (iii) The credit connected to an input service must be distributed only to the particular recipient to whom that input service is attributable.
 - (iv) If the input service is attributable to more than one recipient, the relevant ITC is distributed *pro rata* to such recipients in the ratio of turnover of the recipient in a State/ Union Territory to the aggregate turnover of all the recipients to whom the input service is attributable and which are operational during the current year.
 - (v) ITC pertaining to input services which are common for all units, is distributed to all the recipients in the ratio of turnover in the prescribed manner.
 - (vi) ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in the prescribed form.
 - (vii) Both ineligible and eligible ITC are to be distributed separately.
 - (viii) ITC of CGST, SGST/UTGST and IGST are to be distributed separately.
 - (ix) ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.

(x) ITC of CGST and SGST/UTGST, in respect of a recipient located in a different State/Union territory, is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).

(xi) ITC on account of IGST is distributed as IGST.

Note: Any four points may be mentioned.

(d) Following exporters are eligible for Export Promotion Capital Goods Scheme (EPCG) as per Foreign Trade Policy 2015-20:-

- (i) Manufacturer exporters with or without supporting manufacturer(s),
- (ii) Merchant exporters tied to supporting manufacturer(s), and
- (iii) Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Further, following capital goods are eligible for imports under this scheme:-

- (1) Capital goods including capital goods in CKD/SKD condition
- (2) Computer systems and software which are a part of capital goods being imported
- (3) Spares, moulds, dies, jigs, fixtures, tools & refractories
- (4) Catalysts for initial charge plus one subsequent charge
- (5) Capital goods for Project Imports notified by CBEC.