

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

- (1) All questions should be answered on the basis of the position of GST law as amended up to 31.10.2017 and customs law as amended by the Finance Act, 2017 and notifications and circulars issued till 31.10.2017.
- (2) The GST rates for goods and services mentioned in various questions are hypothetical and may not necessarily be the actual rates leviable on those goods and services. The rates of customs duty are also hypothetical and may not necessarily be the actual rates. Further, GST compensation cess should be ignored in all the questions, wherever applicable.

1. Power Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.
- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipments, consumables, tools, parts etc. to handle a wide variety of repair work.
 - The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
 - In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
 - The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
 - Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Power Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

S. No.	Particulars	₹
A.	Truck sent to own location in Tamil Nadu	
	(i) Value of items contained in the truck - ₹ 3,00,000	
	(ii) Value of truck - ₹ 25,00,000	

B.	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck – ₹ 2,85,000 (ii) Value of stand-alone machine - ₹ 4,00,000 (iii) Value of truck - ₹ 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C.	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - ₹ 1,06,000 (ii) Value of truck - ₹ 20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D.	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E.	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Power Engineering Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST – 6%	SGST – 6%	IGST – 12%
Container truck, Stand-alone machines		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Works contract for repairs and maintenance of immovable property		
CGST – 9%	SGST – 9%	IGST – 18%

You are required to make suitable assumptions, wherever necessary.

2. ABC Ltd., Noida (Uttar Pradesh) is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:
 - The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹ 42,00,000. However, the actual price at which the machinery is supplied to an

individual customer varies within a range of $\pm 10\%$ depending upon the terms of contract of supply with the particular customer.

- Apart from the price of the machinery, ABC Ltd. charges from the customer the following incidental expenses:
 - o associated handling and loading charges of ₹ 10,000
 - o installation and commissioning charges of ₹ 50,000

The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in every case of supply of machinery.

- Transportation of machinery to the customer's premises is arranged by ABC Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The customer enters into a separate service contract with the GTA and pays the freight directly to it.
- The company provides one year free warranty for the machinery. However, the company also provides an extended two-year warranty on payment of additional charge of ₹ 3,00,000.
- A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company-
 - o recovers the discount given; and
 - o charges interest @ 1% per month or part of the month on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
- For every machinery supplied, ABC Ltd. receives a grant of ₹ 2,00,000 from its holding company DEF Ltd.

ABC Ltd. has supplied a machinery to D Pvt. Ltd. on August 1, 20XX at a price of ₹ 40,00,000 (excluding all taxes). D Pvt. Ltd has its corporate office in New Delhi. However, the machinery has been installed at its manufacturing unit located in Gurugram (Haryana). D Pvt. Ltd. has paid the freight directly to the GTA and opted for two year warranty. Discount @ 2% was given to D Pvt. Ltd. as it agreed to make the payment within 15 days. However, D Pvt. Ltd. paid the consideration on 31st October, 20XX.

Assume the rates of taxes to be as under:

Bottle cap making machine		
CGST – 6%	SGST – 6%	IGST – 12%

Service of transportation of goods		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Other services involved in the above supply		
CGST – 9%	CGST – 9%	CGST – 9%

Calculate the GST payable [CGST & SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.

3. M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes -
- excavators for required period at a per hour rate
 - manpower for operation of the excavators at a per day rate
 - soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

M/s XYZ receives the following services:

- Annual maintenance services for excavators;
- Health insurance for operators of the excavators;
- Scientific and technical consultancy for soil testing and seismic evaluation.

For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:

- Hire charges for excavators - ₹ 18,00,000
- Service charges for supply of manpower for operation of the excavator - ₹ 20,000
- Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000

The GST paid during the said month on services received by M/s XYZ is as follows:

- Annual maintenance for excavators - ₹ 1,00,000
- Health insurance for excavator operators - ₹ 11,000
- Scientific and technical consultancy for soil testing and seismic evaluation - ₹ 1,00,000

Compute the net GST payable by M/s XYZ for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

Note: - Opening balance of input tax credit of GST is nil.

4. Bansal and Chandiok is a partnership firm of Chartered Accountants in Jaipur (Rajasthan). The firm specialises in bank audits providing services to banks across India. It has an annual turnover of ₹ 110 lakh in the preceding financial year.

With reference to the provisions of the CGST Act, 2017, examine whether the firm can opt for the composition scheme. Will your answer change, if-

- (a) the turnover of the firm is ₹ 90 lakhs?
 - (b) Bansal and Chandiok is not a partnership firm of Chartered Accountants but a partnership firm providing support services to restaurants like booking tables, advertisement etc.?
5. (i) Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the supply of goods by Mr. Z to customer in US is an inter-State supply?
- (ii) RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

6. Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:
- (i) Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.
 - (ii) Works contract services availed for constructing a car washing shed in its premises

7. ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

For the month of December, 20XX, the company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

Note: GST @ 18% is applicable on supply of the support services provided by ABC Pvt. Ltd. Rate of exchange is ₹ 65 per US \$.

8. SNP Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells 'Z' only within Tamil Nadu. The turnover of the company in the previous year was ₹ 55 lakh. The company expects the sales to grow by 20% in the current year. Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 01.07.20XX. The purchase price of the capital goods was ₹ 20 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30.09.20XX was ₹ 40 lakh.

The Board of Directors of SNP Pvt. Ltd. wants to know-

- whether they have to register under GST?
- whether they can take input tax credit on machinery purchased? If yes, then how much credit can be availed?

Advice Board of Directors of SNP Pvt. Ltd. on the above issues with reference to the provisions of GST law.

9. Rishabh Enterprises – a sole proprietorship firm – started an air-conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	February	March
	(₹)*	(₹)*
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	6,50,000

Sale of alcoholic liquor for human consumption in Uttarakhand		5,00,000
Interest received from banks on the fixed deposits	1,00,000	1,00,000
Export of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

* excluding GST

You are required to provide reasons for treatment of various items given above.

10. Answer the following questions:

- (i) Shagun started supply of goods in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded ₹ 20 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹ 1,26,000.
- (ii) Sagar, managing director of Telecom Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Telecom Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Sagar, if he fails to appear before the central tax officer.

11. Rajul has been issued a show cause notice (SCN) on 31.12.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. He has been given an opportunity of personal hearing on 15.01.2022.

Advice Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.

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

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

13. Elaborate the duties of Anti-profiteering Authority.

14. With reference to section 54(3) of the CGST Act, 2017, mention the cases where refund of unutilised input tax credit is allowed.

15. Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

- (i) The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
- (ii) Can Ranjan seek advance ruling to determine (a) the classification of the goods proposed to be supplied by him and (b) the place of supply, if he supplies said goods from Delhi to buyers in U.S?
- (iii) Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?
- (iv) The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?
- (v) Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt.

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so?

16. Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

Particulars	US \$
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250
Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Though the aircraft arrived on 22.08.20XX, the bill of entry for home consumption was presented by Mr. X on 20.08.20XX.

The other details furnished by Mr. X are:

	20.08.20XX	22.08.20XX
Rate of basic customs duty	20%	10%
Exchange rate notified by CBEC	₹ 60 per US\$	₹ 63 per US\$
Exchange rate prescribed by RBI	₹ 61 per US\$	₹ 62 per US\$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	12%

Compute-

- (i) value of product 'Z' for the purpose of levying customs duty
 - (ii) customs duty and tax payable
17. An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transhipped to Cochin port. Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars:

S.No.	Particulars	Amount
(i)	Cost of the machine at the factory of the exporter	US \$ 20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
(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)	Actual insurance charges paid are not ascertainable	---
(vii)	Charges for design and engineering work undertaken for the machine in US	US \$ 5,000
(viii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(ix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(x)	Exchange rate to be considered: 1\$ = ₹ 60	

18. Determine the assessable value of imported goods in the following cases:

Case I

Particulars	US \$
FOB value	1,000

Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges	10

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known

Case III

Particulars	US \$
FOB value	1,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60
Insurance charges	Not known

Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Insurance charges	Not known

Case V

Particulars	US \$
FOB value	1,000
Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	250
Insurance charges	10

19. With reference to the recent amendments made in the Customs Act, 1962, examine the validity of the following statements:
- A beneficial owner of imported goods is a person on whose behalf the goods are being imported.
 - Customs area does not include a warehouse.
 - Customs station includes international courier terminal.

20. With reference to the recent facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:
- What is the objective of the facility?
 - Who is eligible to avail this scheme?
 - What are the due dates for payment of duty under this facility?
 - What are the circumstances when the deferred payment facility will not be available?

SUGGESTED ANSWERS

1. **Computation of GST Liability of Power Engineering Pvt. Ltd., Bangalore for the month of November 20XX**

S.No.	Particulars	₹
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% [Note 1]	36,000
	Container truck sent to own location in Tamil Nadu [Note 2]	-
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 3]	-
	Container truck sent to client location in Tamil Nadu [Note 3]	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 4]	-
C.	Container truck sent to client location in Karnataka [Note 3]	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs [Note 4]	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% [Note 5 and Note 6]	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% [Note 5 and Note 7]	2,16,000
Total GST liability		15,12,000

Notes:

- (1) Movement of goods without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Schedule I of the said Act. The purchase value is taken as taxable value, being the open market value in terms of rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in

the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)

In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of items contained in the truck is the location of such goods at the time at which the movement of goods terminates for delivery to the recipient i.e., Tamil Nadu in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.

- (2) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

- (3) Supply of goods without consideration is deemed to be a supply *inter alia* when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck are moved to client location and not between 'distinct

persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.

- (4) As per section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, *inter alia*, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repairs. Hence, the contract is that of a works contract.

Further, as per section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.

The items used in relation to the repair and maintenance work could be consumables or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repairs.

- (5) The activity is a composite supply of works contract, which is treated as supply of service. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.

Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(2) of the CGST Act, 2017.

- (6) In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located i.e., Tamil Nadu in terms of section 12(3)(a) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act,

2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- (7) In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

2. Computation of GST liability of ABC Ltd.

Particulars	(₹)
Price of machine [Note 1]	40,00,000
Handling and loading charges [Note 2]	10,000
Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Additional warranty cost [Note 5]	3,00,000
Grant from DEF Ltd. [Note 6]	<u>2,00,000</u>
Total price of the machine	46,10,000
Less: 2% cash discount on price of machinery = Rs.40,00,000 × 2% [Note 7]	<u>80,000</u>
Taxable value of supply	45,30,000
Tax liability for the month of August 20XX [Note 11]	
IGST @ 12% [Note 8 and Note 9]	5,43,600
Tax liability for the month of October 20XX [Note 11]	
Interest collected @ 3% on ₹ 44,10,000 [Note 10]	1,32,300
Cash discount recovered [Note 10]	<u>80,000</u>
Cum-tax value of interest and cash discount	2,12,300
IGST = (₹ 2,12,300/112) × 12%	22,746
Total IGST payable on the machinery	5,66,346

Notes:

- (1) As per section 15(1) of the CGST Act, 2017, the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. It is assumed that ABC Ltd. and D Pvt. Ltd are not related and the price is the sole consideration for the supply.
- (2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.

(3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.

(4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.

The supplier (ABC Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Tax will be separately levied on the supply of service of transportation of goods under reverse charge.

(5) Warranty cost is includible in the value of the supply since transaction value includes all elements of the price excluding those that can be specifically excluded as per section 15 of the CGST Act.

(6) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017.

(7) Cash discount was deducted by ABC Ltd. upfront at the time of supply on August 1, 20XX and hence, the same is excluded from the value of supply as it did not form part of the transaction value.

(8) In the given case-

- the location of the supplier is in Noida (UP); and
- the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

(9) The given supply is a composite supply involving supply of goods (machinery) **and** services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.

As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

(10) Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d) of the CGST Act, 2017. Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.

The cash discount not allowed and interest have to be considered as cum tax value and tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017.

- (11) It has been assumed that the invoice for the supply has been issued on August 1, 20XX, the date on which the supply is made. Thus, the time of supply of goods is August 1, 20XX in terms of section 12(1)(a) of the CGST Act, 2017.

As per section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 31st October, 20XX, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

3. **Computation of net GST payable by M/s XYZ**

Particulars	GST payable (₹)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: Input tax credit [Refer Working Note 2 below]	2,00,000
Net GST liability	63,400

Working Notes

(1) **Computation of gross GST liability**

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
Gross GST liability			2,63,400

Notes:

- (i) Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a

case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the hiring out of the excavator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

- (ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) **Computation of input tax credit available for set off**

Particulars	GST paid (₹)	ITC available (₹)
Annual maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	1,00,000
Total input tax credit available		2,00,000

Notes:

- (i) Section 17(5)(d) of the CGST Act, 2017 blocks credit on goods and/or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s XYZ on its own account for construction of immovable property; instead they are used for outward taxable supply of hiring out of machinery.

Therefore, the annual maintenance service for the excavators does not get covered by the bar under section 17 of the CGST Act, 2017 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.

- (ii) Section 17(5)(b)(iii) of the CGST Act, 2017 allows input tax credit on health insurance only when:
- (a) the Government notifies the services as obligatory for an employer to

provide to its employees under any law for the time being in force; or

- (b) the said service is used for making an outward taxable supply of the same category of service or as part of a taxable composite or mixed supply.

Since, in the given case, the health insurance service does not fall under any of the above two categories, the credit thereon will not be allowed.

4. As per section 10(1) of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

- (a) 1% of the turnover in State/ Union territory in case of a manufacturer,
- (b) 2.5% of the turnover in State/ Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (c) 0.5% of the turnover in State/ Union territory in case of other suppliers.

Further, sub-section (2) of section 10 lays down that the registered person shall be eligible to opt for composition levy if:—

- (a) he is not engaged in the supply of services other than restaurant services;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under CGST Act, 2017
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) 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
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.

Basis above provisions, a firm of Chartered Accountants, being a supplier of professional services (other than restaurant services) is not eligible to apply for composition scheme. Therefore, it has to discharge its tax liability under regular provisions at the applicable rates.

- (a) The answer will not change even if the turnover of the firm had been ₹ 90 lakh since the ineligibility of the firm to opt for composition scheme is not linked with the turnover of the firm, but with the nature of the services supplied by the firm.

Therefore, since even with turnover of ₹ 90 lakh the ineligibility in respect of nature of services supplied by firm exists i.e., the firm provides professional services and not restaurant services; it will not be eligible for composition scheme.

- (b) The answer will not change even if the firm is providing support services to restaurants as only the supplier providing restaurant services *per se* are eligible for composition scheme.
5. (i) The transaction undertaken by Mr. Z is neither import nor export of goods in terms of Customs Act, 1962. However, it is an inter-State supply in terms of provisions of section 7(5)(a) of the IGST Act, 2017 which provides that when the supplier is located in India and the place of supply is outside India, supply of goods or services or both, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

- (ii) As per section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services i.e., USA.

As per section 2(6) of the IGST Act, 2017, 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 section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

6. As per section 16(1) of the CGST Act, 2017, every registered person can 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. However, section 17(5) of CGST Act, 2017 specifies certain goods and services on which the input tax credit is not available.

In the light of the foregoing provisions, the availability of input tax credit (ITC) in respect of the various expenses incurred by Krishna Motors is discussed below:

- (i) Section 17(5)(a) specifically blocks ITC on motor vehicles and other conveyances.

However, the same is allowed when the motor vehicles and other conveyances are used, *inter alia*, for further supply of such vehicles or conveyances. Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed.

However, ITC on the cars destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h) of CGST Act.

- (ii) Section 17(5)(c) specifically blocks ITC on 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. Since, in this case the car washing shed is not a plant and machinery and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

- 7. Section 2(13) of the IGST Act, 2017 defines “intermediary” to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13 of the IGST Act, 2017.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier i.e., the location of ABC Pvt. Ltd. which is New Delhi. Further, as per section 8(2) of the IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply.

Therefore, since in the given case, both the location of ABC Pvt. Ltd. and the place of supply of the service provided by it are in New Delhi, the supply of service will be an intra-State supply leviable to CGST & SGST.

Assuming that the given rate of exchange is prevailing on the date of time of supply of services, the CGST and SGST liability will be worked out as under:

CGST = ₹ 5,85,000 (1,00,000 x 65 x 9%)

SGST = ₹ 5,85,000 (1,00,000 x 65 x 9%)

8. (a) Section 22(1) of the CGST Act, 2017 *inter alia* provides that every supplier, whose aggregate turnover in a financial year exceeds ₹ 20,00,000, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services.

However, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30.09.20XX is ₹ Rs 40 lakh which is more than the threshold limit of ₹ 20 lakh. Therefore, as per section 22 of CGST Act 2017, the company will be liable to registration. However, since SNP Pvt. Ltd. supplied exempted goods till 31.10.20XX, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.

However, the position will change from 01.11.20XX as the supply of goods become taxable from that day and the turnover of company is above ₹ 20 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 20 lakh includes exempt turnover also.

Therefore, turnover of 'Z' will be considered for determining the limit of ₹ 20 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 01.11.20XX (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.

Further, the company cannot avail exemption of ₹ 20 lakh from 01.11.20XX as the GST law does not provide any threshold exemption from payment of tax but threshold exemption from obtaining registration (which in this case had been crossed).

- (b) Rule 43(1)(a) of the CGST Rules, 2017 disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

However, as per section 18(1)(d) of the CGST Act, 2017, where an exempt supply of goods and/or services by a registered person becomes a taxable supply, such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Rule 40(1)(a) of the CGST Rules, 2017 lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time it was supplying exempt goods. However, it can claim credit from

31.10.20XX - the day immediately preceding the date from which the supply became taxable (01.11.20XX).

The credit will be available for the remaining useful life of the machinery and will be computed as follows:

Date of purchase of machinery	01.07.20XX
Date on which credit becomes eligible	31.10.20XX
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on machinery [₹ 20,00,000 x 18%]	₹ 3,60,000
Credit to be reduced [₹ 3,60,000 x 5% x 2]	₹ 36,000
Amount of credit that can be taken [₹ 3,60,000 – ₹ 36,000]	₹ 3,18,000

9. As per section 22 of the CGST Act, 2017, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakh.

However, if such taxable supplies are made from any of the specified special category States, namely, States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ₹ 10 lakh.

In the given question, since Rishabh Enterprises is engaged in making taxable supplies from Maharashtra which is not a specified Special Category State, the threshold limit for obtaining registration is ₹ 20 lakh.

The threshold limit is not reduced to ₹ 10 lakh in this case, as sale of alcoholic liquor for human consumption from Uttarakhand (one of the specified Special Category States) are non-taxable supplies in terms of section 9(1) of CGST Act, 2017.

As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

Computation of aggregate turnover of Rishabh Enterprises

Particulars	Turnover of February (₹)	Cumulative turnover of February & March (₹)
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [₹ 5,50,000 + ₹ 6,50,000]
Add: Sale of alcoholic liquor for human consumption in Uttarakhand [Note-1]		5,00,000
Add: Interest received from banks on the Fixed Deposits [Note-2]	1,00,000	2,00,000 [₹ 1,00,000 + ₹ 1,00,000]
Add: Export of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [₹ 1,50,000 + ₹ 2,00,000]
Aggregate Turnover	8,00,000	22,50,000

Notes:

- As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.
- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. Thus, interest received from banks on the fixed deposits is an exempt supply and is, therefore, includible while computing the aggregate turnover.

Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed ₹ 20 lakh in that month. However, since its aggregate turnover exceeds ₹ 20 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration.

- (i) Where the aggregate turnover of a supplier making supplies from a State/UT exceeds ₹20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration. However, in the given case, although

Shagun became liable to registration on 25.01.20XX, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

(a) ₹ 10,000

or

(b) an amount equivalent to the tax evaded [₹ 1,26,000 in the given case], whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is ₹ 1,26,000.

- (ii) Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who 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 inquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Sagar, in the given case.

11. The written submissions in reply to SCN issued to Rajul are as follows:

- i. The show cause notice (SCN) issued for normal period of limitation under section 73(1) of the CGST Act, 2017 is not sustainable.
- ii. The SCN under section 73(1) of the CGST Act, 2017 can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act, 2017. The adjudication order under section 73(10) of the CGST Act, 2017 has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

The due date for furnishing annual return for a financial year is on or before the 31st day of December following the end of such financial year [Section 44 of the CGST Act, 2017]. Thus, SCN under section 73(1) of the CGST Act, 2017 can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

- iii. The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021.
- iv. Since the notice has been issued after 30.09.2021, the entire proceeding is barred by limitation and deemed to be concluded under section 75(10) of the CGST Act, 2017.

12. As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

13. The duties of the Anti-profiteering Authority are:

- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- (ii) to identify the taxpayer who has not passed on the benefit
- (iii) to order
 - (a) reduction in prices
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be.

If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
- (c) imposition of penalty
- (d) cancellation of registration
- (iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017].

14. As per section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilised input tax credit at the end of any tax period in the following cases:

- (i) **Zero rated supplies:** Supply of goods/services/both to an SEZ developer/unit or export of goods or services or both. However, refund of unutilized input tax credit shall not be allowed if:
 - the goods exported out of India are subjected to export duty;
 - the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

- (ii) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.
15. (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, *inter alia*, determining the classification of any goods or services or both. Therefore, Ranjan can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2). Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/Union territory under CGST Act also.

Thus, AAR is constituted under the respective State/Union Territory Act and not the central Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/Union territory.

It is also for this reason that the questions on determination of place of supply cannot be raised with the AAR. Hence, Ranjan cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by him.

Note: The above answer is based on the view taken by the CBEC in its e-flier issued on the subject of advance ruling. The e-flier is available on the CBEC's website. However, it can be also be argued that the question relating to determination of the liability to pay tax on goods and/or services as provided under section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply. This is so because place of supply is one of the factor to determine as to whether the supply is leviable to CGST & SGST or IGST.

- (iii) Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.
- (iv) No, the tax advisor's view is not correct. As per section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with

Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the receipt of the advance ruling. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

- (v) Section 103 of the CGST Act provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

16. Computation of assessable value of product 'Z'

Particulars		Amount
Ex-factory price of the goods		8,500 US \$
Freight from factory of the exporter to load airport (airport in the country of exporter)	250 US \$	
Loading and handling charges at the load airport	250 US \$	
Freight from load airport to the airport of importation in India	<u>4,500 US \$</u>	
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	5,000 US \$	
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (restricted to 20% of FOB value) [Note 1]		1,800 US \$
Insurance (actual)		2,000 US \$
CIF for customs purpose		12,300 US \$
Value for customs purpose		12,300 US \$
Exchange rate as per CBEC [Note 2]		₹ 60 per US \$
		Amount (₹)
Assessable value (₹ 60 x 12,300 US \$)		7,38,000
Add: Basic customs duty @ 10% [Note 3]		73,800

Add: Education cess @ 2% & Secondary & Higher Education Cess @ 1% of custom duty [3% of ₹ 73,800]	2,214
Value for the purpose of levying integrated tax [Note 4]	8,14,014
Add: Integrated tax leviable under section 3(7) @ 12%	97,681.68
Total duty & tax payable (rounded off)	1,73,696

Notes:

- (1) In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].

FOB value in this case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading and handling charges at the load airport (250 US \$) which is 9,000 US \$.

- (2) Rate of exchange determined by CBEC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (3) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. Education Cess and Secondary Higher Education Cess leviable on integrated tax have been exempted vide *Notification Nos. 54 & 55 Cus both dated 30.06.2017*.
- (5) No landing charges are to be added to the CIF value in view of the amendment in rule 10(2) of the CVR vide *Notification No. 91/2017 – Cus. (NT) dated 26.09.2017*.

17. Computation of assessable value of imported goods

Particulars	Amount (US \$)
Price of the machine at the factory of the exporter	20,000
Add: Transport charges up to the port in the country of the exporter [Note 1]	1,000
Handling charges at the port in the country of the exporter [Note 1]	100
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000

Buying commission [Note 3]	<u>Nil</u>
FOB value	26,100.00
Add: Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	<u>Nil</u>
CIF value	28,393.63
Add: Unloading and handling charges paid at the place of importation [Note 6]	<u>Nil</u>
Assessable value	28,393.63
Assessable value in Indian rupees @ ₹ 60/ per \$	₹ 17,03,617.80
Assessable value (rounded off)	₹ 17,03,618

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) By virtue of the amendment carried out in rule 10(2) of the CVR vide *Notification No. 91/2017Cus. (NT) dated 26.09.2017*, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

18. Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR) has been substituted by a new sub-rule. The new sub-rule provides that for the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include -

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods.

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods.

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum.

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods.

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

In the backdrop of the above provisions, the assessable value in the various cases will be computed as under:

Computation of assessable value

Case I

Particulars	US \$
FOB value	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of	200

importation [20% of FOB value in terms of first proviso to rule 10(2) of CVR]	
Cost of insurance [Includible in terms of rule 10(2)(b) of CVR]	<u>10</u>
Assessable value [CIF value]	1,210

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
<i>Add:</i> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of sum of FOB value of the goods and the cost of insurance in terms of second proviso to rule 10(2) of CVR]	202
Assessable value [CIF value]	1,212

Case III

Particulars	US \$
FOB value	1,000
<i>Add:</i> Cost of sea transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [Includible in terms of rule 10(2)(a) of CVR]	60
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	11.25
Assessable value [CIF value]	1,071.25
Assessable value rounded off	1,071

Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
<i>Add:</i> Insurance [1.125% of sum of FOB value of the goods and sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation in terms of fourth proviso to rule 10(2) of CVR]	11.925
Assessable value CIF value	1071.925
Assessable value rounded off	1,072

Case V

Particulars	US \$
FOB value	1,000
Add: Cost of air transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is restricted to 20% of FOB value when transportation of goods is through air [Fifth proviso to rule 10(2) of CVR]	200
Cost of insurance	10
Assessable value [CIF value]	1,210

19. (a) **The statement is valid.** A new section 2(3A) has been inserted in the Customs Act, 1962 vide the Finance Act, 2017 to define beneficial owner to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.
- (b) **The statement is not valid.** The definition of customs area as provided under section 2(11) of the Customs Act, 1962 has been amended vide the Taxation Laws (Amendment) Act, 2017 to include within its ambit a warehouse too.
- The customs area is now defined to mean the area of a customs station **or a warehouse** and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.
- (c) **The statement is valid.** The Finance Act, 2017 has included international courier terminal and foreign post office within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.
- As per the amended section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.
20. (i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing. This scheme is in force w.e.f. 16th November, 2016.
- (ii) Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).
- As a part of the ease of doing business focus of the Government of India, the CBEC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBEC.

(iii) The due dates for payment of deferred duty are -

S. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

(iv) If there is default in payment of duty by due date more than once in three consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

Note: GST law is in its nascent stage and has been subject to frequent changes. Although many clarifications have been issued in the last six months by way of FAQs or otherwise, many issues continue to arise on account of varying interpretations on several of its provisions. Therefore, alternate answers may be possible for the above questions depending upon the view taken.