This chapter includes GST Main Book 19 Q & A
Please refer 18 Examples in GST Main Book

Chapter 9: - Registration

ICAI's Test Your Knowledge

Q1. Determine the effective date of registration in following cases:

(a) The aggregate turnover of Dhampur Footwear Industries of Delhi has exceeded the applicable threshold limit of Rs. 40 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.

(b) Mehta Teleservices is an internet service provider in Lucknow. Its aggregate turnover exceeds Rs. 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.

A.

(a) Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [Rs. 40 lakh in this case] in a finacial year [Section 22 (1) read with Notification No. 10/2019 CT dated 07.03.2019]. Since in the given case, the turnover of Dhampur Industries exceeded Rs. 40 lakh on 1st September, it becomes liable to registration on said date.
Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10 of the CGST Rules, 2017]. Therefore, the effective date of registration is 1st September.

(b) Since in the given case, the turnover of Mehta Teleservices exceeds the applicable threshold limit [Rs. 20 lakh] on 25th October, it becomes liable to registration on said date.
Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5th December.

Q2. In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

A. A Permanent Account Number is mandatory to be eligible for grant of registration. One exception to this is a non-resident taxable person. A non-resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form (Section 25(6) & (7)).

Q3. State which of the following suppliers are liable to be registered:

(a) Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed the applicable threshold limit during the financial year.

(b) An agriculturist who is only engaged in supply of produce out of cultivation of land and its aggregate turnover does not exceed the applicable threshold limit during the financial year.

A.

(a) Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit in a financial year. However, as per section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed the applicable threshold limit during the financial year.

(b) As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.

Q4. What are the advantage of taking registration in GST?

A. Registration will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
- Become eligible to avail various other benefits and privileges rendered under the GST laws.

Q5. Can a person without GST registration collect GST and claim ITC?

A. No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

Q6. If a person is making taxable supplies from different States, with the same PAN number, can he operate with a single registration?

A. No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation (and is liable to pay GST).

Q7. Can a person having multiple places of business in a State obtain separate registrations for each place of business?

A. Yes. In terms of the proviso to sub-section (2) of section 25, a person having multiple places of business in a State/UT may obtain a separate registration for each such place of business, subject to such conditions as may be prescribed.

Q8. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

A. Yes. In terms of sub-section (3) of section 25, a person, though not liable to be registered under sections 22 or 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q9. Can the Department, through the proper officer, suo-moto proceed to register of a person?

A. Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.

Q10. Whether the registration granted to any person is permanent?

A. Yes, the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

Q11. Is it necessary for the UN bodies to get registration under GST?

A. Yes. In terms of section 25(9) of the CGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal.

The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

Q12. What is the responsibility of the taxable person making supplies to UN bodies?

A. The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.

Q13. What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?

A. In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Q14. What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?

A. In such cases, the registration may be cancelled with retrospective effect by the proper officer [Section 29(2)(e)].

Q15. Is there an option to take centralized registration for services under GST Law?

A. No, the tax paper has to take separate registration in every State from where he makes taxable supplies.

Q16. What could be the liabilities (in so far as registration is concerned) on transfer of a business?

A. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].

Q17. At the time of registration, will the assessee have to declare all his places of business?

A. Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

Q18. Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

A. Yes, as per section 29(5) of the CGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Q19. Uday Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is Rs. 34 lakh in Maharashtra and Rs. 8 lakh in Nagaland. What is your opinion for registration.

A. Since Uday Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is Rs. 40 lakh. However, the threshold limit will not be reduced to Rs. 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) are non-taxable supplies (clarified vide Circular No. 96/15/2019 GST dated 28.03.2019).

In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of Rs. 40 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra, but is not required to obtain registration in Nagaland as he is not making any taxable supplies from said State.

GST Main Book's Questions

Q1. Give example of registration.

A.

Supplier	Engaged	Aggregate turnover	Applicable threshold limit for registration	Whether liable to obtain registration?
Prithiviraj of Assam	exclusively in supply of shoes	Rs. 22 lakh	Rs. 40 lakh	×
	exclusively in supply of pan masala	Rs. 22 lakh	Rs. 20 lakh	✓
	exclusively in supply of taxable services	Rs. 22 lakh	Rs. 20 lakh	✓
	in supply of both taxable goods and services	Rs. 22 lakh	Rs. 20 lakh	✓
Shivaji of Telangana	exclusively in supply of toys	Rs. 22 lakh	Rs. 20 lakh	✓
	exclusively in supply of ice cream	Rs. 22 lakh	Rs. 20 lakh	✓
	exclusively in supply of taxable services	Rs. 22 lakh	Rs. 20 lakh	✓
	in supply of both taxable goods and services	Rs. 22 lakh	Rs. 20 lakh	✓
Ashoka of Manipur	exclusively in supply of paper	Rs. 12 lakh	Rs. 10 lakh	✓
	exclusively in supply of tobacco	Rs. 12 lakh	Rs. 10 lakh	✓
	exclusively in supply of taxable services	Rs. 12 lakh	Rs. 10 lakh	✓
	in supply of both taxable goods and services	Rs. 12 lakh	Rs. 10 lakh	✓

Q2. Give example of distinct person.

A. Mr. A, Delhi having PAN ABCDE1234F

Delhi North Delhi	Delhi Central Delhi	Delhi South Delhi
Shop 1	Shop 2	Shop 3
07ABCDE1234F1Z5	07ABCDE1234F1Z5	07ABCDE1234F1Z5
Same person same PAN treated as single person since in same State (* Business vertical definition deleted w.e.f. 1.2.2019 NN 2/2019 CT dated 29.1.2019 therefore separate registration of same business can be taken and if taken it shall be treated as distinct person)		

Mr. A, Maharashtra having PAN ABCDE1234F

Mumbai	Pune	Nagpur
Shop 1	Shop 2	Shop 3
27ABCDE1234F1ZR	27ABCDE1234F2ZR	27ABCDE1234F3ZR
Same person same PAN treated as distinct person since taken different registration		
Maharashtra	Delhi	Sikkim
Head Office	Branch Office	Branch Office
27ABCDE1234F1ZR	07ABCDE1234F1ZR	11ABCDE1234F1ZR
Same person same PAN still treated as distinct person		

Q3. There is an assessee located in New Delhi and registered under GST at Delhi. He wishes to participate in a 15 days trade exhibition in the State of Tamil Nadu where he does not have a permanent place of business. Would such assessee be liable for registration in the state of Tamil Nadu? In case yes, what would be the procedure for his registration?

A. A person who occasionally undertakes business transactions in goods and/or services in the State where he doesn't have a fixed place of business is considered as a casual taxable person. In the given example, such person would be considered as a casual taxable person for the State of Tamil Nadu.

The casual taxable person is required to make an application for registration in the state where he doesn't have a permanent place of business. Such person is required to deposit a sum called advance deposit which is equal to the estimated liability of tax for the period he wishes to operate in the respective state. For making advance deposit of money, such casual taxable person will be allotted a temporary identification number by GSTN.

Q4. In case a person liable for registration on 1st July makes an application for registration on 10th August, what substantive benefits will not be available to the assessee for making late application of registration?

A. Since the application for registration is required to be made within 30 days period of being liable for it and late applications of registration would result in registration to be effective from the date of grant of registration i.e. 10th August in case of our example. For the period of non-registration, the assessee will not be able to claim ITC. The customers of the supplier would not be able to claim ITC of material supplied to them during the period of non-registration.

Q5. Whether the UN bodies, Consulate and Foreign embassies will be liable for registration under the GST Law?

A. Under the GST Law, tax is required to be charged on taxable supplies made to UN bodies, Consulates or foreign embassies, At the same time, these bodies have been made entitled to seek refund of any tax paid under GST Law. To enable them to seek such refund, they are required to seek registration under the GST Law.

Q6. Can there be multiple ISD of a single registered person?

A. Yes, a business entity can have multiple ISD in different States or even in one state. No such restriction has been provided under the GST Act.

Q7. Gaurav is having a rental income from residential house given on rent of Rs.12 Lakhs and he is also having a kirana shop which has a turnover of Rs. 10 Lakhs. Is he required to be registered under GST.

A. In the given case the aggregate turnover of Gaurav would consist of Rs. 12 Lakhs from exempt supply of rent from residential property and Rs. 10 Lakh from taxable supply of Kirana Store. Therefore, Gaurav would be liable to be registered in GST as his aggregate turnover is more than Rs. 20 Lakhs.

Q8. Kuldeep is a trader and he is trading 100% in alcohol for human consumption. His turnover from supply of alcohol for human is Rs. 2 Crore. Whether he is liable to be registered under GST?

A. As per section 2(47) of the CGST Act, 2017, exempt supply includes non – taxable supply. Alcohol for human consumption is a non – taxable supply as it is not leviable to tax under the law. Further, as per Section 23 of the CGST Act, 2017, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act would not be required to be registered.

Therefore, as Kuldeep is exclusively supplying Alcohol for human consumption, which is not liable to tax, he would not be liable to be registered under CGST Act, 2017.

Q9. In the above question, supposedly Kuldeep has also made supply of Soft Drinks of Rs. 10 Lakh. Whether he would be liable to be registered under CGST Act, 2017?

A. If Kuldeep has also made supply of soft drinks of Rs. 10 Lakh along with turnover of Alcohol for human consumption of Rs. 2 crores then in such case, exemption given from registration under section 23 of the CGST Act, 2017 would not be applicable as he is not engaged exclusively in supplying goods not liable to tax under the Law.

Threshold limit for registration would be counted by taking aggregate of both taxable and non – taxable and non – taxable supply and as his aggregate turnover would be more than Rs. 40 Lakh (dealing exclusively in goods), therefore he would be liable for registration under the law.

Q10. Mr. A is a salaried employee (salary income being Rs. 1 crore). Besides, he owns a residential property which is let out for residential purposes for annual rent being Rs. 30 lakh.

A. In this case, aggregate turnover is Rs. 30 lakh, rent received from residential property renting. Since service of renting of residential property for residential purpose is exempt supply, Mr. A shall be exempt from registration requirement as Sec 23 of CGST Act provides for exemption from registration where a person is exclusively engaged in making exempt supplies.

Since Mr. A is not making supply of any taxable services, he is not liable for registration.

Q11. Pure Oils, Delhi has started the supply of machine oils and high speed diesel in the month of April, 20XX. The following details have been furnished by it for the said month: -

Particulars	Amount*
Supply of machine oils in Delhi	2,00,000
Supply of high speed diesel in Delhi	4,00,000
Supply made through Fortis Lubricants - an agent of Pure Oils in Delhi	3,75,000
Supply made by Pure Oils from its branch located in Punjab	1,80,000

*excluding GST

Determine whether Pure Oils is liable for registration.

Will your answer change, if Pure Oils has a branch in Nagaland from where he supplies machine oils amounting to Rs. 2,50,000?

A. Computation of Aggregate turnover

Particulars	Amount
Supply of machine oils in Delhi {Supply of machine oil in Delhi is intra-state supply of goods which is taxable under GST law. It shall be includible in 'aggregate turnover'}	2,00,000
Supply of high speed diesel in Delhi {Supply of HSD in Delhi is intra-state supply of	4,00,000

goods which is non-taxable under GST law. Though non-taxable, it shall be includible in 'aggregate turnover'}	
Supply made through Fortis Lubricants - an agent of Pure Oils in Delhi {Transfer of goods to agent for further supply (sale) is also treated as 'supply' though such transfer does not include any consideration. Sec 7(1)(c) read with Schedule I (Entry 3) covers transfer of goods to agent. Further, since goods have been transferred to Agent in Delhi, such transfer is an intra-state supply of goods which is taxable under GST. It shall be includible in 'aggregate turnover'}	3,75,000
Supply made by Pure Oils from its branch located in Punjab {Supply is made from branch office in Punjab. Under GST law, such branch office is treated as establishment of a different person. Thus, Head Office (Delhi) and Branch Office (Punjab) are treated as 'deemed distinct persons (establishment of different persons)' under GST law. In absence of specific information, it is presumed that Punjab branch is also making 'intra-state' supply. Since ATO is computed on all India basis (establishments operating with same PAN), it shall be includible in 'aggregate turnover'}	1,80,000
Aggregate Turnover	11,55,000

Registration Requirement of Pure Oils, Delhi

All the supplies made by Pure Oils are intra-state supplies and thus, his liability for registration shall be governed by Sec 22 of the CGST Act which provides that every supplier is liable to be registered in the State/UT from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakh (Rs. 40 Lacs for exclusive supplier of goods).

Since the aggregate turnover is not exceeding threshold limit, Pure Oils is not liable to be registered.

In case where Pure Oils has a branch in Nagaland from where he supplies machine oils amounting to Rs. 2,50,000, then aggregate turnover in that case will be 14,05,000 (11,55,000 + 2,50,000). Further, in this situation, the applicable threshold for registration will be Rs. 10 lakh as Nagaland is one of the specified Special Category States. Thus, in such situation Pure Oils, Delhi shall be liable to be registered.

Q12. Mr. A, a dealer (situated in Mumbai) dealing with Intra State supply of goods and services has place of business in India furnished the following information in the financial year 20XX-X1:

1. Sale of taxable goods by Head Office located in Chennai for Rs. 2,00,000
2. Supply of taxable services by Branch office at Delhi for Rs. 1,00,000
3. Supply of goods exempted from GST Rs. 10,000
4. Export of goods for Rs. 2,00,000

A. Computation of Aggregate turnover

Particulars	Amount
Sale of taxable goods by Head Office located in Chennai	2,00,000
Supply of taxable services by Branch office at Delhi	1,00,000
Supply of goods exempted from GST	10,000
Export of goods and services	2,00,000
Aggregate Turnover	5,10,000

Though aggregate turnover is not exceeding Rs. 20 lakhs, but since he is engaged in exports which are inter-state supplies, his registration falls under section 24 which provides for compulsory registration (i.e., no threshold limit of 20 Lakhs).

Note: Export (inter-state supplies), Export supplies are zero-rated in terms of Sec 16 of IGST Act.

For availing benefit of zero-rating provided by Sec 16, registration is mandatory. [Sec 16(3) of IGST Act gives benefit to 'registered person']

Q13. Mr. A has aggregate turnover of Rs 15 lakhs in a FY from the State of Maharashtra, through its sole proprietorship firm. He has a property located in Chennai, which is currently in dispute and has engaged lawyer for representing his case in dispute. Will Mr. A be required to register himself U/s 24 of the CGST Act, considering persons required to pay under RCM?

A. Mr. A is a business entity making intra-state supplies in State of Maharashtra only. It is unregistered, as his aggregate turnover is not exceeding Rs 20 lakhs in a FY. Now, it has received services legal services which attracts reverse charge and thus, making recipient liable to pay GST. Presuming that legal services have been sought in relation to business, such service is exempt from payment of GST as Mr. A is a business entity with aggregate turnover not exceeding Rs 20 lakhs. Such service being exempt, the recipient, Mr. A, is actually not required to pay GST. Thus, he is not required to take compulsory registration U/s 24 of CGST Act.

Q14. Whether the Department through the proper officer, can suo-moto proceed with registration of a person under the Act?

A. Yes. In terms of sub-section (8) of Section 25, where a person who is liable to be registered under the CGST Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under the CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed.

Q15. Whether the proper Officer can reject an Application for Registration?

A. Yes. The Proper officer can reject the Application for registration in Form GST REG 05, if after filling the Application of registration in Form GST REG 01 the proper officer issued notice in Form GST REG 03 for further clarification and no response or no satisfactory response is given by the applicant.

Q16. What will be the effective date of registration?

A. Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be date on which he become liable for registration.

Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of suo moto registration, i.e. registration pursuant to any survey, enquiry, inspection, search or any other proceedings, the effective date of registration shall be the date of order of registration.

Q17. At the time of registration will the assessee have to declare all his places of business?

A. Yes. The principal place of business and place of business have been separately defined under section 2(85) & 2(89) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

Q18. Should a casual taxable person or non-resident taxable person apply for registration in every State from which that person is operating or is the registration common for all the States?

A. In terms of section 22(1) read with Section 25(1) such persons need to obtain a separate registration in every such States.

Q19. From which State the taxable person should obtain registration?

A. As per Section 22(1) a taxable person should obtain registration in every State from where he makes taxable supply of goods or services or both.

Q20. Whether licensed Tour Guides having registered office in one state but providing services Pan India will have to register in each State?

A. If the presence of tour guide is in each State and he is supplying services from those States then registration requirement in each State would be there.

Q21. When a person engaged in the provision of services having registration in the Maharashtra goes to Kolkata to provide services to its client and stays therefore a period of 3 months and also take a residence in that State is required to take separate registration in that State.

A. No, mere residence is not a business establishment, and therefore he need not take a registration in the State of West Bengal.

9 REGISTRATION

1 **Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of goods at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.**

It has furnished the following details relating to the supply made at such multiple locations for the month of June:-

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(₹) *	(₹) *	(₹) *
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits	-	-	60,000
Intra-State supply of non-taxable goods	-	21,00,000	40,000

*** excluding GST**

With the help of the above mentioned information, answer the following questions giving reasons:-

(1) **Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case.**

(2) **Explain with reasons whether your answer in (1) will change in the following independent cases:**

(a) **If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh;**

(b) **If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;**

(c) **If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter-State supplies of taxable goods amounting to ₹ 4,00,000.**

As per section 22 of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

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.

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

Computation of State-wise aggregate turnover of Mahadev Enterprises

Particulars	Himachal Pradesh (₹)*	Uttarakhand (₹)*	Tripura (₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits [Note-1]	-	-	60,000
Intra-State supply of non-taxable goods [Note-2]	-	21,00,000	40,000
Aggregate Turnover	**22,50,000**	**21,00,000**	**14,00,000**

Notes:

1. 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.* Since aggregate turnover includes exempt supply, interest received from banks on the fixed deposits, being exempt supply, is included in the aggregate turnover.

2. As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, intra-State supply of non-taxable goods in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, included in the aggregate turnover.

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh and Uttarakhand and in supply of both goods and exempted services from Tripura, the threshold limit for registration will be ₹ 40 lakh, ₹ 20 lakh and ₹ 10 lakh respectively.

Further, since Mahadev Enterprises also makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), the threshold limit for registration will be reduced to ₹ 10 lakh.

(1) Thus, in view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the

aggregate turnover amounting to 5₹ 7,50,000 (computed on all India basis). The applicable threshold limit of registration in this case is ₹ 10 lakh. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

(2) (a) If Mahadev Enterprises is dealing in supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be ₹ 40 lakh. Thus, Mahadev Enterprises will not be liable for registration as its aggregate turnover would be ₹ 22,50,000.

(b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of ₹ 40 lakh will not be applicable as the same applies only in case of exclusive supply of goods. Therefore, in this case, the applicable threshold limit will be ₹ 20 lakh and hence, Mahadev Enterprises will be liable to registration.

(c) In case of inter-State supplies of taxable goods, section 24 of the CGST Act, 2017 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

2 LMN Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'X' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells 'X' only within Tamil Nadu and is not registered under GST. The turnover of the company in the previous year was Rs. 45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 01.07.20XX. The purchase price of the capital goods was ₹ 30 lakh exclusive of GST @ 18%.

However, effective from 01.11.20XX, exemption available on 'X' 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 ₹ 45 lakh.

(a) Examine the above scenario and advise LMN Pvt Ltd. whether it needs to get registered under GST.

(b) If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"?

(a) Section 22(1) of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, 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 ₹ 45 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN 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 ₹ 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' will be considered for determining the limit of ₹ 40 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.

(b) Section 18(1)(a) of the CGST Act, 2017 provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be 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 on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, LMN Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing X as input tax credit of only inputs is allowed when a person gets registered for the first time.

3 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 ₹ 50 lakh.

(a) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST?

(b) In case in the above question, SNP Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Z', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Z'? If yes, then how much credit can be availed?

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

(a) Section 22(1) of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

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 ₹ 50 lakh which is more than the applicable threshold limit of ₹ 40 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 ₹ 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40lakh includes exempt turnover also.

Therefore, turnover of 'Z' will be considered for determining the threshold limit 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 Rs. 40 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 relatable 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 the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit from 31.10.20XX - the day immediately preceding the date from which the supply of product 'Z' 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**

4 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
Supply 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.

As per section 22 of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

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 given question, since Rishabh Enterprises is engaged in making taxable supplies of gods and services from Maharashtra and Uttarakhand, the threshold limit for obtaining registration is Rs. 20 lakh.

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: Supply 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:

1. 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.

2. 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. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

5 AB Pvt. Ltd., Pune provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is ₹ 18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?

As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds threshold limit in a financial year.

However, section 24 of the said Act enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO),who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.[1]

Section 2(45) of the CGST Act defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, AB Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

[1] *Persons making supplies of **services**, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh/ ₹ 10 lakh as the case may be, in a financial year, have been exempted from obtaining registration vide Notification No. 65/2017 CT dated 15.11.2017.*

6 Discuss the procedure for amendment of registration under CGST Act and rules thereto?

The procedure for amendment of registration are contained in section 28 read with rule 19 of CGST Rules. The significant aspects of the same are discussed hereunder:

1. Where there is any change in the particulars furnished in registration application/UIN application at the time of obtaining the registration or thereafter, registered person shall submit an application in prescribed manner, within 15 days of such change, along with documents relating to such change at the Common Portal.

2. In case of amendment of core fields of information, the proper officer may, on the basis of information furnished or as ascertained by him, approve or reject amendments in the registration particulars in the prescribed manner. Such amendment shall take effect from the date of occurrence of event warranting such amendment.

3 However, where change relates to non-core fields of information, registration certificate shall stand amended upon submission of the application for amendment on the Common Portal.

4 Where a change in the constitution of any business results in change of PAN of a registered person, the said person shall apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

7 Pari & Sons is an unregistered dealer. On 10th August, 20XX aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27th August, 20XX and was granted the registration certificate on 1st September, 20XX.

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices.

Section 22(1) of the CGST Act, 2017 provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit.

Section 25(1) of the CGST Act, 2017 provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2) of the CGST Rules, 2017; otherwise it is the date of grant of registration in terms of rule 10(3) of the CGST Rules, 2017.

In the given case, since Pari & Sons have applied for registration on 27.08.20XX which is within 30 days from the date of becoming liable to registration (10.08.20XX), its effective date of registration is 10.08.20XX.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within one month from the date of issuance of registration certificate [Section 31(3)(a) of the CGST Act, 2017 read with rule 53(2) of CGST Rules, 2017].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10.08.20XX) and the date of issuance of registration certificate (01.09.20XX), on or before 01.10.20XX.

8 With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act, 2017.

Sl. No.	Particulars	Amount (₹)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal.	3,00,000
(iii)	Export supply to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in	5,00,000

	Rajasthan.	
(v)	**Outward supply of services on which GST is to be paid by recipient under reverse charge.**	**1,00,000**

All the above amounts are excluding GST.

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

Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000
Supply to its own additional place of business in Rajasthan[2] [Note-4]	Nil
Outward supply of services on which GST is to be paid by recipient under reverse charge [Note-5]	1,00,000
Aggregate turnover	**7,00,000**

Notes:-

1. As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of diesel, being a non-taxable supply, is an exempt supply and exempt supply is specifically includible in aggregate turnover in terms of section 2(6) of the CGST Act, 2017.

[2] *The above solution has been worked out on the assumption that supply to another place of business is without consideration (as per general business practices).*

2. Supply of goods after completion of job work by a registered job worker shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22 of the CGST Act, 2017.

3. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6) of the CGST Act, 2017.

4. Supply made without consideration to units within the same State (under same registration) is a not a supply and hence not includible in aggregate turnover.

5. Outward supplies taxable under reverse charge would be part of the "aggregate turnover" of the supplier of such supplies. Such turnover is not included as turnover in the hands of recipient.

As per section 22 of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

The applicable turnover limit for registration, in the given case, will be ₹ 20 lakh as Rajasthan is not a Special Category State and M/s. Jayant Enterprises is engaged in supply of goods and services. Although, the aggregate turnover of M/s Jayant Enterprises does not exceed ₹ 20 lakh, it is compulsorily required to register in terms of section 24(i) of the CGST Act, 2017 irrespective of the turnover limit as it is engaged in making inter-State supplies in the form of exports to England.

9 Rajesh Dynamics, having its head office in Chennai, Tamil Nadu carries on the following activities with respective turnovers in a financial year:

	₹
Supply of petrol at Chennai, Tamil Nadu	**18,00,000**
Value of inward supplies on which tax is payable on reverse charge basis	**9,00,000**
Supply of transformer oil at Chennai, Tamil Nadu	**2,00,000**
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration	**1,50,000**
Value of taxable supplies at Manipur branch	**11,50,000**

It argues that it does not have taxable turnover crossing threshold limit of ₹40,00,000 either at Chennai, Tamil Nadu or Bengaluru, Karnataka and including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration, but is required for determining composition levy.

Decide based on the above facts:

(i) The aggregate turnover of Rajesh Dynamics.

(ii) All conditions that fulfil the requirements for registration under CGST Act, 2017 in the given circumstances.

Computation of aggregate turnover of Rajesh Dynamics:

Particulars	₹
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of CGST Act, 2017]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000

Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	**33,00,000**

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceeds ₹ 40 lakh. However, since Rajesh Dynamics also makes supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to ₹ 10 lakh in terms of section 22(1) of CGST Act, 2017 *[Notification No.10/2019-CT dated. 07.03.2019]*.

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Further, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

Further, Rajesh Dynamics is compulsorily required to register under section 24 of the CGST Act, 2017 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.

This chapter includes GST Main Book 10 Q & A
Please refer 2 Examples in GST Main Book

Chapter 10: - Tax Invoice, Credit & Debit Notes

ICAI's Test Your Knowledge

Q1. Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.

A. As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

Q2. MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?

A. Continuous supply of service means, inter alia, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Q3. The aggregate turnover of Sangri Services Ltd. exceeded Rs. 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advice Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

A. As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded Rs. 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised

Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.
Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

Q4. Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.
A. A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017].
Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

Q5. Discuss the provisions relating to issuance of refund voucher under CGST Act and rules thereunder.
A. Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a Receipt Voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a Refund Voucher against such payment. [Section 31(3)(e) read with rule 51]

Q6. Is a registered person liable to pay tax under reverse charge under section 9(3) of the CGST Act required to issue an invoice? Discuss the relevant provisions under CGST Act and rules thereunder.
A. Recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/services/both which are notified for reverse charge purposes. Such supplies can be received from a registered or an unregistered supplier [Section 9(3)].
A registered person who is liable to pay tax under reverse charge [under section 9(3) of the CGST Act] shall issue an Invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.
Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3) of the CGST Act] shall issue a Payment Voucher at the time of making payment to the supplier. [Section 31(3)(f) & (g) read with second proviso to rule 46 and rule 52]

Q7. Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules thereunder.
A. **Provision related to Credit Note:-**
As per section 34 (1), Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.
As per section 34 (2), Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such

credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Provision related to Debit Note:-

As per section 34 (3), Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

As per section 34 (4), Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

Q8. What is the time period within which invoice has to be issued for supply of services?

A. As per Rule 47 of the CGST Rules, 2017 (Chapter VI- Tax Invoice, Credit and Debit Notes), Invoice has to be raised within 30 days of supply of service.

Q9. What is the time period within which invoice has to be issued in a case involving continuous supply of goods?

A. Where successive statements of accounts/ successive payments are involved, the invoice shall be issued before/at the time each such statement is issued or each such payment is received.

Q10. What is the time period within which invoice has to be issued in a case involving continuous supply of services?

A.

a) Due date of payment is ascertainable from the contract:- on or before the due date of payment;

b) Due date of payment isn’t ascertainable from the contract:- before or at the time when the supplier of service receives the payment;

c) Payment is linked to the completion of an event:- on or before the date of completion of that event.

Q11. What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?

A. Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

i. before/at the time of supply

or

ii. 6 months from the date of removal

whichever is earlier.

GST Main Book's Questions

Q1. ABC Ltd. entered into a contract with XYZ Ltd., for supply of goods on 15th August 2017. The goods were to be delivered on 30th August 2017. ABC Ltd. removed goods on 28th August 2017. When should ABC Ltd. issue the tax invoice?

A. 28th August 2017 according to section 31.

Q2. The aggregate turnover of ABC Ltd. exceeded Rs. 20 Lacs on 15th August 2017. It applied for registration on 5th September 2017 and was granted registration on 7th September 2017. Please give your commentary for this.

A. As per Section 25 of CGST Act, ABC Ltd. has applied within 30 days of becoming liable for registration. So, effective date of registration is date on which it becomes liable to registration i.e. 15th August 2017.

As per Section 31, ABC Ltd. has to issue the revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration i.e. 15th August 2017, till date of issuance certificate of registration i.e. 7th September 2017 within 1 month from the date of issuance of certificate of registration i.e. on or before 7th October 2017.

Q3. ABC Ltd. is a trader dealing in provisions items. It is registered under GST and has undertaken following sales during the day:

Sr. No.	Recipient of Supply	Amount
1	A – a registered retail dealer under composition levy	190
2	B – an unregistered dealer	500
3	C – an unregistered buyer	900
4	D Charitable Trust – an unregistered entity	175
5	E – a senior citizen – an unregistered	150

None of the recipients require a tax invoice.

A. In the given question, ABC Ltd. can issue a consolidated tax invoices to supplies made to D Charitable trust & E as the value of goods supplied to these recipients is less than Rs. 200 (unregistered & don't require a tax invoice).

Although A sales is less than Rs. 200 but A is registered retail dealer. So consolidated invoice cannot be issued. Other sales are anyway more than Rs. 200, so consolidated invoice cannot be issued.

Q4. When can a taxable person not issue credit note?

A. According to proviso to Sec 34 (2) of the CGST Act, 2017, no credit note shall be issued by the taxable person if the incidence of tax and interest on such supply has been passed by the supplier to the recipient. No reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Q5. What is the time limit for issuance of credit note?

A. A supplier cannot issue a credit note pertaining to a supply of goods or services or both of a particular financial year later than the

(i) Month of September following the end of the financial year in which such supply was made, or

(ii) Date of furnishing of the relevant annual return.

Whichever is earlier.

Example: Suppose, Mr. A has supplied goods to Mr. B in the month of Sept'17. Mr. B sends a complaint to Mr. A about deficient quality of goods. Mr. A can issue a credit note to Mr. B in respect of such supply of goods and declare details of such credit note in the return till the month of Sept'18 or till the date of furnishing of annual return of 2017-18, whichever is earlier.

Q6. When can a debit note be issued? Is there any time limit for issue of debit note?

A. Debit note can be issued by the supplier of the goods or services or both, to the recipient, when subsequent to the issue of tax invoice he comes to know that taxable value or tax charged in that tax invoice is less than the taxable value or tax payable with respect to such supply

Example: Mr. A has provided services of dry cleaning to Mr. B and charges Rs. 500 and tax at the rate of 12% i.e. Rs. 60. Afterwards, Mr. A comes to know that he has undercharged Mr. B by Rs. 200. He communicates to Mr. B that he has charged Mr. B less by Rs. 200 and issues debit note and charges additional tax of Rs. 24. In such a case, tax liability of Mr. A would be on Rs. 700 only and he would have to pay tax of Rs. 84.

There is no time limit for issuance of debit note.

Q7. I am constructing a building for my client. The client is required to pay me on completion of plinth, 1st floor and 2nd floor. When should the invoice be raised?

A. The above instance is a case of continuous supply of services. Here, since the payment is linked to completion of an event (i.e., milestones set in the contract), an invoice should be raised on or before the due date of completion of event as per section 31(5)(c) of the CGST Act, 2017. Therefore, an invoice be raised on or before completion of the 1st floor and the second time on or before the completion of 2nd floor.

Q8. I had a contract for supplying manpower for 28 days for Rs. 28,000/-. However, after 10 days, the service has stopped. Should I raise an invoice?

A. Yes. Where a supply of service ceases before its completion, an invoice has to be issued at the time the supply ceases, i.e., on the 10th day. The invoice shall be issued to the extent of the service provided before its cessation. (Section 31(6) of the CGST Act,2017).

Q9. ABC Ltd., located in Pune (Maharashtra), received the advance to supply the training. As per the agreement, the supplier may have to impart the training to Jaipur branch or Mumbai branch (both are registered place of recipient) as per the need. What should be the treatment?

A. At the time of receiving the advance, supplier is known that where he has impart the training. Nevertheless, he has to issue the receipt voucher at the time of receipt of advance. As far as, nature of supply is concerned, he will have to treat it as inter-State supply and will have to pay IGST on it. If later on it is supplied that it was imparted in Mumbai Branch (intra-State supply), then as per Section 19 of IGST Act, it says that person will pay correct tax (here, it is CGST+SGST, being found as intra-State supply) without interest and claim the refund of IGST paid.

Q10. How can I supply goods without movement?

A. In cases where the ownership, or the risks and rewards are transferred without requiring the movement of goods, the goods would be treated as supplied although no movement is involved in effecting such supply. E.g. when an Agent who is in possession of certain goods decides to buy the goods from the principal, or in case where there is an on-site installation of machinery, or in case of sale and lease back transactions, etc.

10 TAX INVOICE, CREDIT AND DEBIT NOTES

1 Jai, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:

(i) Whether Jai is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?

(ii) Jai sells some exempted as well as taxable goods valuing ₹ 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?

(iii) Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers. You are required to advise him.

(i) No, he is not required to issue tax invoice in all cases. As per section 31(1) of the CGST Act, 2017, every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) of the CGST Act, 2017 stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, rule 46A of the CGST Rules, 2017 provides that a registered person supplying taxable as well as exempted goods or services or both to an un-registered person may issue a single 'invoice-cum-bill of supply' for all such supplies.

However, as per section 31(3)(b) of the CGST Act, 2017 read with rule 46 of the CGST Rules, 2017, a registered person may not issue a tax invoice if:

(i) value of the goods supplied <₹ 200,

(ii) the recipient is unregistered; and

(iii) the recipient does not require such invoice.

Instead, such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.

(ii) As per rule 46A of the CGST Rules, 2017, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single **"invoice-cum-bill of supply"** may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the taxable and exempted goods respectively.

(iii) As per section 33 of the CGST Act, 2017 read with rule 46(m) of the CGST Rules, 2017, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.

2 Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1, 20XX. Its turnover exceeded ₹ 40 lakh on October 3, 20XX. The firm applied for registration on October 31, 20XX and was issued registration certificate on November 5, 20XX.

Examine whether any revised invoice can be issued in the given scenario. If the answer to the first question is in affirmative, determine the period for which the revised invoices can be issued as also the last date up to which the same can be issued.

As per section 31(3)(a) of the CGST Act, a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) of CGST Rules lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Avtaar Enterprises has applied for registration within 30 days of becoming liable for registration and the registration has been granted. Thus, the effective date of registration is the date on which Avtaar Enterprises became liable for registration i.e., October 3, 20XX. Therefore, since in the given case there is a time lag between the effective date of registration (October 3, 20XX) and the date of grant of certificate of registration (November 5, 20XX), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3, 20XX till November 5, 20XX. Further, the revised invoices can be issued for the said period till December 5, 20XX.

3 Discuss the provisions relating to issue of an invoice/document in the following circumstances:

(i) Advance payment is received against a supply, but subsequently no supplies are made.

(ii) Goods are sent on approval for sale or return and are removed before the supply takes place.

(iii) Mr. Mohan provides continuous supply of services to his client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf.

(i) As per section 31(3)(e) of CGST Act, 2017, where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher has to be issued to the person who had made the advance payment.

(ii) As per section 31(7) of CGST Act, 2017, where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.

(iii) As per section 31(5)(b) of CGST Act, 2017, in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.

This chapter includes GST Main Book 26 Q & A
Please refer 3 Examples in GST Main Book

Chapter 11: - Accounts & Records; E-way Bill

ICAI's Test Your Knowledge

Q1. Sindhu Enterprises is a supplier of goods. Its turnover has exceeded Rs. 2 crore in current financial year. Discuss whether Sindhu Enterprises is required to get its accounts audited by the Chartered Accountant or Cost Accountant under GST law.

A. Section 35(5) of the CGST Act read with rule 80 of the CGST Rules, 2017 provides that every registered person (other than any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law) must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds Rs. 2 crores. Since the turnover of Sindhu Enterprises has exceeded Rs. 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

Q2. Mala Services Ltd. is a supplier of management consultancy services. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?

A. Section 36 of the CGST Act stipulates that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Q3. Essel Groups has started making taxable supplies. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1) of the CGST Act, 2017.

A. Section 35(1) of the CGST Act, 2017 stipulates that a true and correct account of following is to be maintained:

(a) production or manufacture of goods;
(b) inward and outward supply of goods or services or both;
(c) stock of goods;
(d) input tax credit availed;
(e) output tax payable and paid
(f) such other particulars as may be prescribed.

Q4. Swad Restaurant has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in rule 56 of the CGST Rules, 2017.

A. Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4) of the CGST Rules, 2017:

(a) **Stock of goods:**

Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(b) Details of tax:

Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Q5. ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to maintained by Raghav & Sons as per rule 56(11) of the CGST Rules, 2017.

A. Rule 56(11) of the CGST Rules, 2017 provides that every agent shall maintain accounts depicting the-

(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal

GST Main Book's Questions

Q1. Who all can generate E-way bill (EWB)?

A. Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000 or the threshold prescribed (in each State/Union Territory) in relation to supply; or reasons other than supply; or inward supply from unregistered person shall generate EWB.

It means, the consignor or consignee, as a registered person or a transporter of the goods can generate the EWB. The unregistered transporter can enroll on the common portal and generate the EWB for movement of goods for his clients.

Q2. Whether EWB may be generated if the consignment value is less than Rs. 50,000?

A. Yes, the registered person or the transporter, as the case may be, may generate EWB voluntarily, even if the value of consignment is less than Rs. 50,000.

However, Proviso 3 and 4 to Rule 138(1) of the CGST Rules 2017 mandatorily requires a registered person to generate an EWB irrespective of the value of consignment where:

- the goods are to be sent by the principal located in one State or Union Territory to a job worker in other State or Union Territory.
- handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24 of the CGST Act.

Q3. Who has been casted with the ultimate responsibility of generating EWBs? Consignor, consignee or the transporter?

A. The primary responsibility to generate EWB shall be of the registered person who causes the movement of goods, i.e. the consignor or the consignee, as the case may be. However, if such consignor or consignee doesn't generate the EWB, it may be generated by transporter as well, if authorized by the registered person. Also, in case of supply of goods by an unregistered person to registered person, the liability to generate EWB is on the recipient.

Q4. Whether EWB would be required, if transportation is done in one's own vehicle or through a public transport?

A. Yes, as per Rule 138 (2), it has been provided that EWB shall be required to be generated, in case the goods are transported by consignor or consignee in his own vehicle or in a hired one or a public conveyance, by road. In such case, the registered person causing the movement of goods may raise the EWB after furnishing the vehicle no. in Part B of FORM GST EWB – 01 if the value of goods being transported is more than Rs. 50,000.

Q5. How shall one calculate the distance and validity of goods in case of supply through multi-modal transport?

A. The distance and the validity of EWB shall remain the same even if the goods are supplied through a multi-modal transport. In order to calculate the validity of the EWB, the distance to be covered by all the modes combined together must be taken into consideration. The validity provided in the CGST Rules is as under:

Sr. No.	Distance	Validity Period
1.	Upto 100 KM	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

2.	For every 100 KM, or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 KM	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 KM or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

The "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill. For example:

- Suppose eway bill generated on April 1, 2018 at 5 p.m. for transport of cargo which will cover a distance of 90 kms. This eway bill will be valid for one day (till mid night of April 2, 2018);
- Suppose eway bill generated on April 1, 2018 at 5 p.m. for transport of cargo which will cover a distance of 190 kms. This eway bill will be valid for two days (till mid night of April 3, 2018).

Note:- Supplier handed over the goods to the transporter on April 1, 2018. Part A of the eway bill was submitted by the supplier on April 1, 2018 after updating the GSTIN of the transporter. Transporter loaded the goods on the truck on April 3, 2018 and completed Part B of the eway bill by updating the vehicle number. In this case, the validity of the eway bill commences from April 3, 2018.

Q6. What is the liability of generation of EWB in case of transportation of goods through e-commerce?

A. Generally, in case of an E-Commerce business model, the logistics is handled by an independent third party logistic service provider. So, in such a case 4 parties are involved in the transaction (seller, buyer, logistic service provider and E-Commerce operator). Therefore, in such cases where the goods are to be transported through an e-commerce operator, on an authorization from consignor, Part A of the EWB may be furnished by the E-Commerce operator and Part B of the EWB may be furnished either by the E-Commerce operator or by the third party logistic service provider.

Q7. Whether any other document needs to be provided to the transporter in addition to EWB, for movement of goods?

A. In accordance with Rule 55A read with Rule 138A of the CGST Rules, the person in-charge of conveyance shall carry

- Tax Invoice or Delivery Challan or Bill of Supply, as the case may be; and
- a copy of the EWB in physical form or the EWB number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

EWB is an additional document and not a substitute for Tax Invoice, delivery challan or any other prescribed document for the said transaction.

Q8. Can the EWB be deleted?

A. The EWB once generated cannot be deleted. However, it can be cancelled by the generator within 24 hours of its generation. If it has been verified by any proper officer within 24 hours, then it cannot be cancelled. Further, EWB can be cancelled if, either goods are not transported or are not transported as per the details furnished in the EWB. A recipient has right to cancel/ reject the EWB within 72 hours of its generation or actual receipt of goods, whichever is earlier.

Q9. In case of High Sea Sale Transactions – Whether EWB is required?

A. EWB is required for movement of goods within the country. In case of High Sea Sales as the supply is affected before the goods cross the custom frontiers of India, EWB is not required to be generated. When the ultimate buyer files bill of entry, he is required to generate EWB for movement of goods from port to his place of business.

Q10. Whether EWB is required to be generated for the movement of goods between CFS /ICD to port in the course of importation and exportation of goods?

A. Rule 138(14) of the CGST Rules 2018, provides that no EWB is required to be generated in respect of:

- Movement of goods from the port, airport, air cargo complex and land customs station to an ICD or a CFS for clearance by Customs in the course of importation.
- where the goods are being transported—
    1. under customs bond from an ICD or a CFS to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
    2. under customs supervision or under customs seal

Therefore, EWB is not required for movement of goods between CFS/ICD to port or vice versa in the course of importation and exportation of goods.

Q11. How to handle "Bill to" - "Ship to" invoice in e-way bill system?

A. Sometimes, the tax payer raises the bill to somebody and sends the consignment to somebody else as per the business requirements. There is a provision in the e-way bill system to handle this situation, called as 'Bill to' and 'Ship to'.

In the e-way bill form, there are two portions under 'TO' section. In the left hand side - 'Billing To' GSTIN and trade name is entered and in the right hand side - 'Ship to' address of the destination of the movement is entered. The other details are entered as per the invoice.

In case ship to state is different from Bill to State, the tax components are entered as per the billing state party. That is, if the Bill to location is inter-state for the supplier, IGST is entered and if the Bill to Party location is intra-state for the supplier, the SGST and CGST are entered irrespective of movement of goods whether movement happened within state or outside the state.

Q12. Whether multiple invoices can be clubbed in one E way bill? If yes, then to what extent?

A. The value of goods determined in the invoice shall be regarded as the value of consignment, on the basis of which it is decided whether the consignor or consignee is required to generate EWB or not. Therefore, a separate EWB is required to be generated for every individual invoice where value of corresponding consignment exceeds Rs.50,000.

Q13. If the goods are taken from one State to another for the purpose of display in exhibition, whether EWB is required to be generated?

A. EWB would be required to be generated, where the value of the consignment exceeds Rs. 50,000.

Q14. How to generate the EWB in case goods are to be moved to a weighbridge situated outside the factory and invoice cannot be issued unless goods are weighed?

A. EWB is not required to be generated where the goods are to be transported up to a distance of 20 kms for the purpose of weighment from the place of business of consignor to a weighbridge, or, from the weighbridge back to place of consignor. However, such movement should be along with delivery challan to be covered under relaxation of EWB generation.

Q15. What if the vehicle is stuck at a particular point in the journey due to calamity or traffic jam?

A. The goods are required to be transported within the validity period of the EWB. However, it is provided that under circumstances of exceptional nature, the transporter may generate another EWB after updating the details in Part-B of FORM GST EWB-01. These circumstances could be said to be in the nature of exceptional nature. However, in the absence of specific meaning of the term "exceptional nature", further clarification is required.

Q16. What if the same invoice contains both categories of goods i.e. ones exempted for the purpose of EWBs and taxable, then whether EWB needs to be generated?

A. It is to be noted that the explanation to the Rule 138(1) provides that consignment value for the purpose of EWB shall be the value, determined in accordance with the provisions of Section 15, declared in invoice or delivery challan or bill of supply as the case may be. However, it shall exclude the value of exempt supply where the invoice is issued in respect of both exempted and taxable supply of goods. Therefore, the value of taxable goods only shall be considered for the purpose of consignment value.

Q17. A registered person has purchased a new mobile phone for Rs. 75,000 and carrying with him on motorized vehicle. Whether EWB is required to be generated?

A. Yes. It appears that if the movement is caused by a registered person, EWB is required to be generated for goods exceeding value of Rs. 50,000.

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Q18. A person has been shifting his households from one State to another on account of job change. Whether EWB is required to be generated?

A. Used personal and household effects have been covered in the Annexure to the Rule 138 in respect of which EWB is not required to be generated. Hence, such person is not required to generate EWB in such cases.

Q19. How to consider consignment value in case goods is being moved for renting purpose. Do we need to take the value of goods or value of the rent charged on goods?

A. The consignment value is the value of goods to be determined under section 15 of the CGST Act including applicable tax thereon. The rent charged represents the value of service portion whereas EWB is to be generated for the value of goods for which movement is to be undertaken. Hence, in such cases, the value to be considered should be of the goods not the rental charges charged by the supplier of services. The movement could be based on delivery challan based on which EWB may be generated.

Q20. Supply of goods through pipeline, whether oil, petroleum, gases, water, electricity etc. whether EWB is required to be generated?

A. EWB is required to be generated when movement of goods is through motorized conveyance. Further, the EWB portal has 4 modes of transportation i.e. road, air, rail and ship. As the transportation of goods through pipeline may not involve movement of goods through motorized vehicle, there may not be need to generate EWB for such movement of goods.

Q21. An outdoor catering company is transporting utensils and other accessories for catering outside the kitchen, interstate or intra state. Whether EWB is necessary? If yes what are the documents to be attached with the EWB? If not under which document, it has to be dispatched?

A. The EWB is required for every movement of goods, even if it is for the purpose other than supply. When the goods are transported by caterer for use by him in the course of making supply of catering services, it could be said to be movement of goods by him for himself/ self-use. Though there is no supply of utensils and other materials to the customer, yet there is movement of goods and hence EWB is required to be generated. Such EWB may be generated against delivery challan, by providing "Outward" movement and "For own use" under the reason for transportation.

Q22. A farmer carries the goods from his farm to Mandi for the purpose of sale therein. Whether there is requirement to generate EWB?

A. Many of the agricultural produces have been exempted from the levy of GST. Wherever items to be transported is exempted from GST, there is no need to generate EWB. However, if the goods being transported by farmer are in the nature of taxable goods, EWB has to be generated.

Q23. Where goods are supplied on "as is-where is" basis, whether EWB is required to be generated?

A. EWB is not required to be generated for supply of goods unless it involves movement of goods through motorized conveyance. In case of sale of goods on "as is – where is" basis, there is no movement of goods. Hence, there is no need to generate EWB in case of such instances.

Q24. In many cases where manufacturer or wholesaler is supplying to retailers, or where a consolidated shipment is shipped out, and then distributed to multiple consignees, the recipient is unknown at the time the goods are dispatched from shipper's premises. A very common example is when FMCG companies send a truck out to supply kirana stores in a particular area. What needs to be done in such cases?

A. In such cases, EWB shall be generated for outward movement of goods. No supply is being made, movement is caused on behalf of self. In such cases, delivery challan may be used for generation of EWBs. All the provisions for delivery challan need to be followed along with the rules for EWBs.

Q25. Where an invoice is in respect of both goods and services, whether the consignment value should be based on the invoice value (inclusive of value of services) or only on the value of goods. Further, whether HSN wise details of service is also required to be captured in Part A of the EWB in such case.

A. Consignment value and HSN needs to be determined for goods only not for services as only the goods are in movement and EWB needs to be generated accordingly.

Q26. What shall be the consequence if any document, register, or books of accounts belonging to a registered person are found at any premises other than those mentioned in the certificate of registration?

A. As per Rule 56(10) of the CGST Rules, 2017, unless it is proved otherwise, if any document, register, or books of accounts belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

11 ACCOUNTS AND RECORES; E-WAY BILL

1 **With reference to the provisions relating to the electronic way bill (E-way bill) as prescribed under the GST laws, answer the following questions:**

(i) **Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of such toys to the retail seller in Gujarat.**

You are required to advise Sindhi Toys Manufacturers on the following issues:

(a) **Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?**

(b) **If yes, who is required to generate the e-way bill?**

(c) **What will be the consequences for non-issuance of e-way bill?**

(ii) **Power Electricals Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Power Electricals Ltd. claims that since movement of goods to Gujarat is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.**

You are required to examine the technical veracity of the claim made by Power Electricals Ltd.

(iii) **Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Prasannaa, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be**

fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Prasannaa. The goods are transported to Prasannaa in Delhi, in a single conveyance owned by Radhey Transporters.

You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).

(i) **(a)** Rule138(1) of the CGST Rules, 2017 provides that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows:

= ₹ 48,000 × 118%

= ₹ 56,640.

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

(b) An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

(c) It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported is more than ₹ 50,000/- and it is not otherwise exempted in terms of rule 138(14) of CGST Rules, 2017. If e-way bills, wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be considered as contravention of rules. As per section 122(1)(xiv) of CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per section 129(1) of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

(ii) The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1) of the CGST Act, 2017, *inter alia*, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, generate an electronic way bill (E-way Bill) before commencement of such movement.

CBIC vide Q 9. of FAQs on E-way Bill has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds ₹ 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Power Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

(iii) Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The *FAQs on E-way Bill* issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

2 Happy Company is a registered supplier of electric goods. It has three stores for electric goods in Jodhpur (Rajasthan) namely Ram Store, Shyam Store, Mohan Store. It receives an order for supply of electric goods worth ₹ 1,40,000 (exclusive of GST @ 18%) from Kishan Sons of Bhopal (Madhya Pradesh). Happy Company found that order worth ₹ 43,000 can be fulfilled from the company's Ram Store, order worth ₹ 45,000 can be fulfilled from its Shyam Store and remaining goods worth ₹ 52,000 can be sent from its Mohan Store. All three stores are instructed to issue separate invoices for the goods sent to Kishan Sons. The goods are transported to Kishan Sons in Bhopal in a single conveyance owned by Shiv Transporters.

You are required to advise Happy Company with regard to issuance of e-way bills as per the provisions of the CGST Act, 2017.

Rule 138 of the CGST Rules, 2018 stipulates that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to a supply and the consignment value [including CGST, SGST/ UTGST, IGST and cess charged] exceeds ₹ 50,000.

Further, the *FAQs on E-way Bill* issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, multiple e-way bills have to be generated - one e-way bill for each invoice. Each invoice is considered as separate consignment for the purpose of generating e-way bills.

In the given case, consignment value of goods supplied against separate invoices from Ram Store, Shyam Store and Mohan Store is ₹ 50,740 [₹ 43,000 × 118%], ₹ 53,100 [₹ 45,000 × 118%] and ₹ 61,360 [₹ 52,000 × 118%] respectively.

Thus, Happy Company is required to prepare 3 separate e-way bills since value of each invoice exceeds ₹ 50,000.

3 When is an e-way bill required to be generated?

As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

e-way bill needs to be generated prior to the commencement of transport of goods.

Further, in the following situations, e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

(i) Where goods are sent by a principal located in one State/ Union territory to a job worker located in any other State/Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.

(ii) Where specified handicraft goods are transported from one State/ Union territory to another State/ Union territory by a person who has been exempted from the requirement of obtaining registration under section 24 of the CGST Act, 2017, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

4 The supplier opting for composition levy need not maintain certain records as per rule 56(2) and 56(4) of the CGST Rules, 2017. Explain.

As per rule 56(2) and 56(4) of the CGST Rules, 2017, the supplier opting for composition levy need not maintain the following records:

(i) Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(ii) Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

5 Mr. Bala, a registered person at Chennai wants to maintain proper accounts and records relating to GST. Advise him about the accounts and other records to be maintained under section 35(1) of the CGST Act, 2017.

Mr. Bala, is required to maintain a true and correct account of following under section 35(1) of the CGST Act, 2017:-

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid; and

(f) other prescribed particulars

The records may be maintained electronically. Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business should be kept at such places of business.

This chapter includes GST Main Book 7 Q & A
Please refer 8 Examples in GST Main Book

Chapter 12: - Payment of Tax

ICAI's Test Your Knowledge

Q1. How many types of electronic ledger are there?

A.

(a) Electronic cash ledger
(b) Electronic credit ledger
(c) Electronic liability register

Q2. What are the main features of GST payment process?

A. Electronic tax liability register is a register to be maintained in the common portal of GST in FORM GST PMT-01 to record all liabilities of a taxable person. Part-I is for recording return related liabilities and Part-II is for recording other than return related liabilities.

Electronic credit ledger is a register to be maintained in the common portal of GST in FORM GST PMT-02 to record input tax credit claimed, utilization, reversal and refund.

Electronic cash ledger is a register to be maintained in the common portal of GST in FORM GST PMT- 05 to record deposit of tax, interest, penalty and other amounts, utilization thereof and refund.

GST Payment is done through Electronic Liability Register.

Debit in Electronic Liability Register

- the amount payable towards tax, interest, late fee or any other amount payable as per the return filed by the said person;
- the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceeding under the Act or as ascertained by the said person;
- the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or
- any amount of interest that may accrue from time to time.

Credit in Electronic Liability Register

- Electronic credit ledger (Payment of Amount deducted u/s 51 or amount collected u/s 52, amount payable on Reverse Charge basis, amount payable u/s 10, any amount payable towards interest, penalty, fee or any other amount under the Act)
- Electronic cash ledger
- Relief given by the Appellate Authority or Appellate Tribunal or Court • Reduction in penalty (if any)

Q3. Explain the following terms in brief:

(a) E-FPB
(b) CPIN
(c) CIN

A.

(a) **E-FPB** stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for pan India Transactions. The E-FPB will have to open accounts under each major head for all governments. Total 38 accounts (one each for CGST, IGST and one each for SGST for each State/UT Government) will have to be opened. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS transactions, RBI will act as E-FPB.

(b) **CPIN** stands for Common Portal Identification Number given at the time of generation of challan. It is a 14 digit unique number to identify the challan. The CPIN remains valid for a period of 15 days.

(c) **CIN or Challan Identification number** is generated by banks, once payment in lieu of a generated challan is successful. It is a 17-digit number that is 14-digit CPN plus 3-digit bank code. CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.

Q4. Are principles of unjust enrichment applicable for payment made under GST?
A. Yes, as per Section 49 (9) of the CGST Act, 2017 every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Q5. State the name of output tax under GST, where any of the input tax credit under GST can be availed?
A. IGST. IGST, CGST, SGST, UTGST i.e. all input tax credit can be availed against output tax liability known as IGST.

Q6. Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?
A. No, as per Section 49 (4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.
As per Section 2 (82) of the CGST Act, 2017, output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest, penalty, and payment under reverse charge.

Q7. ABC limited filed the return for GST under section 39(1) for the month of November on 20th, December showing self-assessed tax of Rs. 2,50,000 which was not paid.
Explain what are the implications for ABC limited as per relevant provisions?
A. As per section 2(117) of CGST Act, "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full.
Hence, in such a case, the return is not considered as a valid return and also input tax credit will not be allowed to the recipient of supplies.

Q8. Who is liable to pay GST? Explain in the context of general and special circumstances.
A. General rule - Supplier of goods or services is liable to pay GST.
Specific circumstances –

- Import supplies – Recipient of goods or services has to pay tax under reverse charge
- The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies, of which shall be paid by the electronic commerce operator, if such services are supplied through it
- TDS – If total value of supply under contract > Rs. 2.5 lakhs, then Central and State Government, Local authority, Government agencies is liable to deduct TDS and pay the same to the government
- TCS - E-commerce operators are required to collect tax (TCS) on the aggregate value of supply reduced by returns in a month

Q9. What will happen if the deductor fails to issue TDS Certificate within the time prescribed?

A. As per section 51(4) of the CGST Act, 2017, if any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.

Q10. Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?

A. The rate of TCS as notified under CGST Act, 2017 is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.

Q11. Is every e-commerce operator required to collect tax on behalf of actual supplier?

A. Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator.

GST Main Book's Questions

E-commerce Operator liable to collect TCS	E-commerce Operator not liable to collect TCS	E-commerce Operator not liable to collect TCS
Amazon is liable to collect TCS, because they are facilitating actual supply of goods through their platform (popularly called market place model)	Amazon will not be treated as e-commerce operators liable to collect TCS, in relation to those supplies which they make on their own account (popularly called inventory model)	Titan supplying watches and jewels through its own website would not be considered as an e-commerce operator for the purpose of Section 52. Thus, TCS provisions are not applicable.

Example of TCS: ABC Ltd. is an e-commerce operator. For the month of May 2019, following information was provided by ABC Ltd.

Particulars	Amount in INR
Aggregate Value of all taxable supplies made through ABC Ltd. by all taxable persons	50,00,000
Supplies returned out of above taxable supplies	10,00,000
Value of supply of notified services made by unregistered suppliers through ABC Ltd., falling under Section 9 (5) of the CGST Act	15,00,000

In this case net value of taxable supplies for the purpose of collecting TCS @ 1% shall be Rs. 40,00,000 (Rs. 50,00,000-Rs. 10,00,000). Accordingly TCS amount is Rs. 40,000. ABC Ltd. would be considered deemed supplier of service in terms of Section 9 (5) of the CGST Act for Rs. 15,00,000 and TCS won't be applicable on this. If suppose suppliers are registered & responsible for GST payment then TCS will be also applicable on Rs. 15,00,000. So total TCS amount will become Rs. 55,000.

Q1. How to determine the value limit of Rs. 2,50,000 to decide on the applicability of TDS?

A. As per Section 51, tax to be deducted "where the total value of such supply, under a contract, exceeds Rs 2,50,000". If there is a Purchase order for supply of goods or services or both, for a value exceeding Rs. 2,50,000 then TDS provisions would be attracted. Against the Purchase Order, if several supplies are made under several invoices, even if the value of any particular invoice is less than Rs. 2,50,000 TDS would apply i.e. Public Sector Unit issues 'Purchase order' for a total value of Rs. 10,00,000 on 01.10.2018. Supplier is supplying goods through various invoices & one invoice value is Rs. 50,000. Even then TDS is applicable for this invoice, as the contract value is more than Rs. 2,50,000.

Further, while determining the value, the CGST, SGST, UTGST and IGST shall not be included. For example, if the value of the goods or services being supplied is Rs. 2,40,000/- plus 5% GST, total invoice value Rs. 2,52,000, TDS provisions will not apply, as the value, excluding GST is less than Rs.2,50,000/-.

Q2. State TDS applicability in following cases:

(a) Supply under RCM
(b) Supply by unregistered supplier
(c) Supply by composition Supplier

A.

(a) No TDS, where the tax is to be paid on reverse charge by the recipient i.e. the deductee;
(b) No TDS, where the payment is made to an unregistered supplier;
(c) TDS is required in case of supply received from Composition Supplier i.e. Supplier ZA is a person registered under the composition scheme in Jharkhand who makes taxable supply worth Rs. 10,000 to a Local Authority of Jharkhand where value of taxable supply under the contract is for Rs. 2,55,000 which is more than Rs. 2.5 Lakh and hence deduction of tax is required.

Q3. Mr. X has deducted Rs 1 lakh of TDS in Nov'18. He deposits Rs 70,000 on 10.12.2018 & the rest of Rs 30,000 on 30.01.2019. He submits the return in FORM GSTR 7 on 28.02.2019. Has he incurred any liability to pay late fee or interest? Is he liable to pay any penalty? {FAQ released by CBIC}

A. Electronic Cash Ledger of the DDO is credited on 10.12.2018 and 30.01.2019 with Rs. 70,000 and Rs. 30, 000 respectively on account of deposit of TDS of Rs 70,000/- on 10.12.2018 & Rs 30,000 on 30.01.2019. Since return in FORM GSTR 7 for the month of November, 2018 is filed on 28.02.2019 and he discharges his payment liability of tax so deducted by debiting his electronic cash ledger as well on this date only, therefore, late fee of 80 days (11.12.2018 to 28.02.2019) have to be paid under CGST and SGST. The amount of late fee will be restricted to Rs. 5000 (upper limit provided in the Act). Interest has also to be paid for the delay. Penalty is also payable by a DDO if he fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) of section 51 [section 122 (v) refers]. He is liable to penalty of Rs.1,00,000/-.

Q4. Whether a supplier of goods or services supplying through ecommerce operator would be entitled to threshold exemption? {FAQ released by CBIC}

A. As per Section 24 (ix) of the CGST Act, 2017, every person supplying goods through an ecommerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9 (5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017 – Central Tax Dated 15th November, 2017 in this regard.

Q5. Whether e-Commerce operator is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law? {FAQ released by CBIC}

A. As per the CGST law, registration for TCS would be required in each State / UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State / UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State / UT where it does not have physical presence. It may be noted that each State/UT has indicated one administrative jurisdiction where all e-commerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT.

Q6. Foreign e-commerce operator do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such ecommerce operator and if yes, how will foreign e-commerce operator obtain registration? {FAQ released by CBIC}

A. Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign ecommerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State / UT. It may be noted that each State/UT has indicated one administrative jurisdiction where all ecommerce operators having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.

12 PAYMENT OF TAX

1 **Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 20XX as under:**

S.No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October, 20XX (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh)	12,39,000	12,39,000

(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹ 7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of street lights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.] *an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution	3,50,000	3,50,000

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

As per section 51 of the CGST Act, 2017 read withsection 20 of the IGST Act, 2017 and *Notification No. 50/2018 CT 13.09.2018,*with effect from 01.10.2018, following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000:

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 51% or more participation by way of equity or control, to carry out any function; or

(e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or

(f) Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Manihaar Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	--		
(ii)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	--		

(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 (Note-4)	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000		--		
(vii)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

Notes:

1. Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

   = ₹ 2,60,000 × 100 / 118

   = ₹ 2,20,339 (rounded off)

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

2. Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 2,95,000 × 100 / 118

= ₹ 2,50,000

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

3. Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

= ₹ 5,90,000× 100 / 118

= ₹ 5,00,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.

4. Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 6,49,000× 100 / 118

= ₹ 5,50,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

5. Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Section 12(3) of the IGST Act, 2017, *inter alia,* stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi.

Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient i.e. Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.

6. If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract exceeds ₹ 2,50,000. Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

   = ₹ 2,72,000× 100 / 118

   = ₹ 2,30,509 (rounded off)

   Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

7. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, *inter alia*, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

2 Miss Nitya has following balances in her Electronic Cash Ledger as on 28/02/20XX as per GST portal.

Major Heads	*Minor Heads*	*Amount (₹)*
	Tax	40,000
CGST	Interest	1,000
	Penalty	800
	Tax	80,000
SGST	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

Her tax liability for the month of February, 20XX for CGST and SGST was ₹ 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12/04/20XX to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-20XX.

Other Information:-

(i) Date of collection of GST was 18th February, 20XX.

(ii) No other transaction after this up to 20th April 20XX.

(iii) Ignore penalty and late fee for this transaction.

(iv) No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable.

A. Due date for payment of tax collected on 18.02.20XX is 20.03.20XX. Interest @ 18% p.a. is payable for the period for which the tax remains unpaid in terms of section 50 of CGST Act, 2017. In the given case, since Miss Nitya wants to pay the tax on 20.04.20XX, interest payable on the amount of CGST and SGST each is as follows:

Rs 75,000 × 18% × 31/365 = ₹ 1,147 (rounded off)

Amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be utilized only for that liability. Cross-utilization among Major and Minor heads are not possible.

Thus, Miss Nitya is liable to pay the following amount of tax and interest as under:

		CGST		SGST	
		Tax	**Interest**	**Tax**	**Interest**
	Tax Liability	**75,000**	**1,147**	**75,000**	**1,147**
	Balances in Electronic cash ledger	40,000	1,000	80,000	400
	Amount payable in cash	**35,000**	**147**	**Nil**	**747**

Q. Yash Shoppe, a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017.

You are required to briefly explain the provisions relating to tax deduction at source under section 51 of the CGST Act, 2017 and also determine the amount of tax, if any, to be deducted from each of the receivables given below (independent cases) assuming that the payments as per the contract values are made on 31.10.20XX. The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

(1) Supply of computer stationery to Public Sector Undertaking (PSU) located in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)

(2) Supply of air conditioner to GST department located in Delhi. Total contract value is ₹2,55,000 (exclusive of GST)

(3) Supply of generator renting service to Municipal Corporation of Jaipur. Total contract value is ₹ 3,50,000 (inclusive of GST)

A. As per section 51 of the CGST Act, 2017, Government departments, agencies, local authority and notified persons are required to deduct tax @ 2% (1% CGST + 1% SGST/UTGST) or IGST @ 2% from payment made to the supplier of taxable goods and/ or services where the total value of such supply [excluding tax and compensation cess indicated in the invoice], under a contract, exceeds ₹ 2,50,000.

Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value due to be received [excluding GST] (₹)	Tax to be deducted		
			CGST @ 1% (₹)	SGST @ 1% (₹)	IGST @ 2% (₹)
(1)	Supply of computer stationery to PSU in Mumbai [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] does not exceed ₹ 2,50,000, tax is not required to be deducted.]	2,42,857 [2,72,000 × 100 / 112]	--	--	
(2)	Supply of air conditioner to GST Department in Delhi [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] exceeds ₹2,50,000, tax is required to be deducted.]	2,55,000	--		5,100
(3)	Supply of a generator renting service to Municipal Corporation of Jaipur [Since the total value of supply under the contract [excluding CGST and SGST (being intra-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	3,12,500 [3,50,000× 100 / 112]	3,125	3,125	
	Total		3,125	3,125	51,00

Q A makes intra-State supply of goods valued at ₹ 50,000 to B within State of Karnatake. 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.

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 (Assumed). 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%[1]

	`
Value charged for supply of goods (` 50,000 x 110%)	55,000
Add: IGST @ 18%	9,900
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	4,500
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%	5,445
Total price charged by X Ltd. from Y	71,390

Computation of CGST and SGST payable by X Ltd in cash

	`

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

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

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.

Chapter 13: - Returns

ICAI's Test Your Knowledge

Q1. Mr. X, a regular tax payer, did not make any taxable supply during the month of July. Is he required to file any goods and service tax return?

A. A regular tax payer is required to furnish a return u/s 39 for every month even if no supplies have been effected during such period. In other words, filing of Nil return is also mandatory. Therefore, Mr. X is required to file monthly return even if he did not make any taxable supply during the month of July.

Q2. If a return has been filed, how can it be revised if some changes are required to be made?

A. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided for the purposes of amending previously declared details.

As per section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest.

The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1.

Q3. Which type of taxpayers need to file annual return under section 44?

A. Every registered person, other than ISD's, casual/non-resident taxpayers, tax deductors at source, tax collector at source are required to file an annual return in Form GSTR-9. Taxpayer under composition scheme are required to file annual return in Form GSTR-9A. Casual tax payers, non-resident taxpayers, ISDs and persons authorized to deduct/collect tax at source are not required to file annual return.

Q4. Is an Annual Return U/s 44 and a Final Return one and the same?

A. No. Annual Return has to be filed by every registered person paying tax as a normal taxpayer. Final Return has to be filed only by those registered persons who have applied for cancellation of registration. The Final return has to be filed within three months of the date of cancellation or the date of cancellation order.

Q5. Do Input Service Distributors (ISDs) need to file separate statement of outward supplies with their return?

A. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of outward supplies.

Q6. Is it compulsory for a taxpayer to file return by himself?

A. No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner.

GST Main Book's Questions

Q1. ABC Ltd. furnished annual returns for the year 2017-18 on September 15, 2018. An error is discovered in respect of a transaction pertaining to outward supplies of January 2018. Determine the time limit to rectify the mistake in case return of Sept'18 furnished on October 15 ,2018.

A. Annual return has been furnished by September 15,2018 and return for the month of Sept'18 filed on October 15, 2018. The rectification of error pertaining to January 2018 cannot be done beyond September 15, 2018 as per provision of Section 37 (3).

Q2. In some period of the year, there may not be any business activity like in case of seasonal business. Whether a taxable person will be required to file return in such case also?

A. Every registered taxable person is required to file returns. Without filing the return of the period, next return cannot be filed. Therefore, even if there is no taxable supplies made or received during any period, such person is required to file a NIL return but not filing the return is not an option in GST.

Q3. What are the different means available to taxpayer for filing the returns?

A. The taxpayer can file the return on GSTN by using one of the followings: -

1) By taxpayer himself by using the user id and password issued to such taxpayer
2) By the authorized representative using the login and password issued to such authorized representative. Such authorized representative should have been selected by the taxpayer before such filing and such authorized representative should be linked to such taxpayer account.
3) Through the Facilitation Centre (FC) by using the login and password of such FC. Post filing by FC, system generates a message for taxpayer by mail and SMS.

   Facilitation Centre is a facility for digitization and uploading of returns on the GSTN data base. This facility is created with the approval of Central Board of Indirect Taxes or by respective State Governments. Small taxpayers who don't have facility for digitization of their data and/or uploading their returns can use this facility of facilitation centers for doing this function.

Q4. How would a supplier who has taken a new registration, file his first return under GST?

A. There might be cases wherein a person is liable to be registered under the law from a particular date and there is time gap between the date from when he was liable to be registered under the law and the date on which registration is granted to such person. He would have made outward supplies in this period between the date when he was liable to be registered under the law and the date from which is granted registration.

In such case the registered person who has made outward supplies in the period between the dates on which he became liable to registration till the date on which registration has been granted shall declare the details of such outward supplies in the first return filed by him after the date of grant of registration.

Q5. Whether credit of Input Tax can be used for making payment of Interest, Fees, Penalty and any other Amount?

A. No, Input Tax Credit can only be utilized for making payment towards output tax liability. It can't be used for making payment towards Interest, Fees, Penalty or any other amount payable under this Act.

Q6. Whether GSTR 3B can be revised after filing? Whether there is any column in GSTR 3B for reporting any discrepancies which have taken place while filing returns for previous months?

A. No, GSTR 3B filed, can't be revised. Form GSTR 3B doesn't contain any column for reporting of differential figures for past month(s).

Q7. If a return has been filed, how can it be revised if some changes are required to be made?

A. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system will allow changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided for the purposes of amending previously declared details.

Q8. What will be the legal position in regard to the reversed input tax credit if the supplier later realizes the mistake and feeds the information?

A. At any stage, but before September of the next financial year, supplier can upload the invoice and pay duty and interest on such missing invoices in his GSTR-3B of the month in which he had earlier failed to upload the invoice. The recipient shall be eligible to reduce his output tax liability to the extent of the amount in respect of which the supplier has rectified the mis-match. The interest paid by the recipient at the time of reversal will also be refunded to the recipient by crediting the amount in corresponding head of his electronic cash ledger.

Q9. During the course of inspection/audit/scrutiny/enforcement activity, the department has pointed out certain omissions or incorrect particulars in the returns. Whether the assessee can rectify the returns to correct the omissions or incorrect particulars in its returns?

A. As per Section 39(9), provides for correction in the returns on account of Omission of wrong particulars filed other than as a result of audit/inspection/scrutiny/enforcement, the assessee can rectify such omissions/incorrect particulars in the returns. In the month/quarter in which such omission/ incorrect particulars are noticed, the due tax and interest shall be payable thereon.

13 RETURNS

1 Mr. Anand Kumar, a regular taxpayer, filed his return of outward supply (GSTR-1) for the month of August, 20XX before the due date. Later on, in February, 20XX he discovered error in the GSTR-1 return of August 20XX already filed and wants to revise it.

You are required to advise him as to the future course of action to be taken by him according to statutory provisions.

The mechanism of filing revised return for any correction of errors/omission is not available under GST. The rectification of errors/omission is allowed in the subsequent returns.

Therefore, Mr. Anand Kumar who discovered an error in GSTR-1 for August, 20XX, cannot revise it. However, he should rectify said error in the GSTR-1 filed for February, 20XX and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February, 20XX. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

However, as per section 37(3) of the CGST Act, 2017, no rectification of details furnished in GSTR-1 shall be allowed after:

(i) filing of monthly return/ GSTR-3 for the month of September following the end of the financial year to which such details pertain, or

(ii) filing of the relevant annual return,

whichever is earlier.

This chapter includes GST Main Book 12 Q & A
Please refer 4 Examples in GST Main Book

Chapter 14: - Import & Export under GST

ICAI's Test Your Knowledge

Q1. Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/Developer by a supplier located in the same State as that of the SEZ unit/Developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Explain.

A. Circular No. 48/22/2018 GST has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/Developer shall be treated to be a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/Developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/Developer. It is, therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ unit/Developer shall be treated as an inter State supply.

Q2. How are exports treated under the GST Law?

A. Under the GST Law, export of goods or services has been treated as:

- Inter-State supply and covered under the IGST Act.
- 'Zero rated supply', i.e. the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

Q3. How are imports taxed under GST?

A. All imports are deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue in case of SGST accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

Q4. How are exports taxed under GST?

A. Exports of goods and services are zero rated. The exporter has the option either to export under bond without payment of IGST and claim refund of ITC or pay IGST at the time of export and claim refund thereof.

Q5. Is it necessary to execute a bond for effecting zero rated supplies?

A. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of Rs. 2.5 crore) vide Notification No. 37/2017 CT dated 4.10.2017. The other conditions for executing LUT have been specified in Circular No. 8/8/2017 GST dated 4.10.2017.

GST Main Book's Questions

Q1. Who shall be liable to collect and discharge the Integrated tax liability in cases of provision of cross border B2C OIDAR services?

A. Service providers providing OIDAR services to a non-taxable online recipient in taxable territory would be responsible for collection and discharge of integrated tax.

Q2. Under what circumstances an intermediary, who arranges or facilitates the supply of OIDAR services would not be liable to collect tax from non-taxable online recipient?

A. If the intermediary satisfies the following conditions, he shall not be liable to collect tax from non-taxable online recipient;

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

Q3. Who is non-taxable online recipient?

A. "Non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Q4. Would a supplier of OIDAR required to take registration in all states in India in GST Act?

A. No. The CBIC has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient.

Q5. Mr. A is supplying goods to SEZ Unit. Whether he has to charge IGST on supply of goods.

A. As per the provision of section 16 of IGST Act, 2017, Supply to SEZ Unit are Zero Rated Supplies. Therefore, in such case Mr. A can either supply goods against payment of IGST (which can be claimed as refund) or he can supply goods without payment of IGST (against LUT /Bond).

Q6. A person had submitted Bank Guarantee for Issue of Bond for export of goods without payment of tax. He was granted Bond with a validity period upto 31st March 2018. However, in view of Notification No. 37/2017 – Central Tax Dated 4th October 2017, he wants to submit Letter of Undertaking and get the bond released which was submitted earlier. Can he do so.

A. Yes, he can submit a Letter of Undertaking as per the guidelines issued vide Notification No. 37/2017 – Central Tax Dated 4th October 2017 and get the bond submitted earlier released.

Q7. What is the meaning of the term "Zero Rated Supply"?

A. "Zero Rated Supply" refers to supplies made to SEZ units / developers or exports of goods or services or both. Zero rated supply doesn't necessarily mean that the above supplies are not leviable to IGST or will taxed at "0" (Zero) Rate or will be exempt from IGST unconditionally.

Q8. Are exports and supplies to SEZ units/Developers out of the ambit of GST?

A. No. They are treated as IGST supplies under the IGST Act, 2017. However, the tax burden on the same will be neutralized by granting refunds to persons making such supplies.

Q9. Can SEZ unit / Developers claim refund of IGST charged by his supplier?

A. No. The IGST Act, 2017 allows the supplier of SEZ unit / developer to claim refund of IGST paid by him on supplies to SEZ unit / Developers.

Q10. Are supplies made by SEZ units/Developer are Zero rated supplies?

A. No. only the supplies made to SEZ units/Developer are zero rates supplies. However, exports made by SEZ units/Developer will be zero rated supplies.

Q11. Can the NRI's claim refund of tax paid under Section 15 of IGST Act, 2017?

A. Yes, since the NRI's are not normally resident in India they will be treated as tourist if the stay in India is for legitimate non-immigrant purpose for a period of less than 6 months.

14 IMPORT AND EXPORT UNDER GST

1 Discuss supplies which have been notified as deemed exports under section 147 of CGST Act, 2017.

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.

This chapter includes GST Main Book 15 Q & A
Please refer 3 Examples in GST Main Book

Chapter 15: - Refunds

ICAI's Test Your Knowledge

Q1. Is there any time limit for sanctioning of refund under section 54 of the CGST Act, 2017?

A. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a. will have to be paid in accordance with section 56 of the CGST/SGST Act.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub- section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

Q2. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

A. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].

Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

Q3. In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?

A. In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.

Q4. When is a deficiency memo issued in respect of a refund claim made under section 54?

A. Rule 90(3) of the CGST Rules provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Q5. State the exceptions to the principle of unjust enrichment as applicable to refund claims.

A. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:

i. Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.

ii. Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

(iii) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.

(iv) refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.

(v) if the incidence of tax or interest paid has not been passed on to any other person.

(vi) such other class of persons who has borne the incidence of tax as the Government may notify.

GST Main Book's Questions

Amount to be claimed as refund in case of zero rated supply of goods or services and on account of inverted duty structure (Rule 89)

As per Rule 89 (4), in the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under Deemed export {Rule 89 (4A)} or Merchant export {Rule 89 (4B)} or both.

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under Deemed export {Rule 89(4A)} or Merchant export {Rule 89(4B)} or both.

The value of zero-rated supplies is restricted to 1.5 times of the domestically supplied goods either by the exporter themselves or by other similarly placed supplier. The value adopted by the "similarly placed supplier" prima facie seems to be provided only when the exporter is not having any domestic supply of goods, the requirement is prone to litigation on two counts, i.e. when the value of the similarly placed supplier would be required to be provided and manner of identifying 'similarly placed supplier'.

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.

Confused! Don't worry, see below table

(A) Refund Amount	It means the maximum refund that is admissible	
(B) Net ITC	ITC availed on input & input services during relevant period	....
	Less: ITC availed for which refund is claimed under 89 (4A) Deemed export	....
	Less: ITC availed for which refund is claimed under 89 (4B) Merchant Exporter	....
	ITC availed for relevant period	**................**
(C) Turnover of zero-rated supply of goods	Turnover Zero-rated Supply of goods under bond/LUT {restricted to 1.5 times of the domestically supplied goods}	....
	Less: Turnover on which refund is claimed under 89 (4A) Deemed export	....
	Less: Turnover on which refund is claimed under 89 (4B) Merchant Exporter	....
	Turnover Zero-rated Supply of goods	**................**
(D) Turnover of zero-rated supply of services	Aggregate of payment received during the relevant period for zero rated supply of services	....
	Add: Advances received in any period prior to relevant period but supply completed in this relevant period	....
	Less: Advances received in this relevant period but supply not completed	....
	Turnover Zero-rated Supply of Services	**................**
(E) Adjusted Total Turnover	Turnover of goods in a State / UT (excluding the turnover of services)	....
	Add: Zero rated supply of services as computed in (D)	....
	Add: Non-Zero rated supply of services	....
	Less: Value of exempt supply (Non-zero rated)	....
	Less: Turnover on which refund is claimed under 89 (4A) Deemed export	....
	Less: Turnover on which refund is claimed under 89 (4B) Merchant Exporter	....
	Adjusted Total Turnover	**................**
(F) Relevant Period	It means the period for which the claim has been filed.	

As per Rule 89 (5), In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula –

Maximum Refund Amount = {(Turnover of inverted rated supply of goods & Services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods & Services

No refund on input services & capital goods

Explanation:- For the purposes of this sub-rule, the expressions –

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

Q1. What are the cases under which refund of unutilized input tax credit shall not be allowed?

A. As per first proviso to Sec. 54 (3), no refund of unutilized ITC shall be allowed except in following cases:

(i) Zero rated supplies made without payment of tax, or

(ii) 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 exempt supplies). However, such refund should not relate to supply of goods or services or both as may be notified by the government on recommendation of GST council.

Thus, except the above two exceptions, refund of unutilized credit will not be allowed.

Q2. Whether refund of unutilized ITC can be allowed in case where export of goods is subject to export duty?

A. As per second proviso to Sec. 54 (3), no such refund will be allowed in case goods exported out of India are subject to levy of export duty.

Q3. Whether refund of unutilized ITC can be allowed in case where exporter of goods or services claims drawback or refund of taxes paid on such supplies?

A. The export of goods has to be free from the effect of any taxes. It is important to note that refund of unutilized credit is only one of the methods to free export transactions from the burden of taxes. The other 2 methods are drawback of taxes or refund of taxes paid on such supplies. As per second proviso to sec. 54 (3), refund of input taxes shall not have allowed in case supplier of goods or services avail drawback of central taxes or claims refund of IGST paid on such supplies.

Q4. Whether the principle of unjust enrichment be applicable to export?

A. The principle of unjust enrichment will not be applicable in case of export of goods and services.

Q5. In case of rejection of refund application, what would happen to the amount debited from Input Tax Ledger?

A. As provided in rule 93 (2), in case of rejection of refund application wholly or partly, the amount of claim rejected will be re-credited in the electronic ledger of the applicant.

Example: A Ltd. made an application of refund of unutilized ITC (zero rated) amounting to Rs. 7 Lacs. A Ltd. reduced the balance of Rs. 7 lacs from their electronic credit ledger. The proper officer was not satisfied with claim of Rs. 2 Lacs. He approved the claim of Rs. 5 lacs and rejected the claim of Rs. 2 lacs. Rs. 5 lacs will be credited to the bank account of A Ltd and Rs. 2 lacs will be re-credited to electronic credit ledger of A Ltd.

Q6. ABC Ltd., filed an application for refund of tax amounting Rs. 9,00,000 on 1st Nov''17. The refund was granted on 25th Jan'18. Compute the interest payable?

A. Interest is payable after 60 days which is completing on 31st Dec'17 (60 days from 1st Nov'17). So, interest is payable for 25 days @ 6% i.e. Rs. 9,00,000 * 6% * 25/365 = Rs. 3,698

Q7. Mr. A has opted for Export against LUT / Bond without payment of taxes. LUT/ Bond issued by the Jurisdictional Officer is valid till 31st March 2018. He has exported goods against such LUT / Bond till December 2017. Can he start to export goods against payment of IGST from January 2018?

A. Yes, even though validity of LUT / Bonds is till 31st March 2018, Mr. A can start exporting goods against payment of IGST from January, 2018.

Q8. Mr. A is supplying goods to SEZ Unit. Whether he has to charge IGST on supply of goods?

A. As per the provision of section 16 of IGST Act, 2017, Supply to SEZ Unit are Zero Rated Supplies. Therefore, in such case Mr. A can either supply goods against payment of IGST (which can be claimed as refund) or he can supply goods without payment of IGST (against LUT /Bond).

Q9. Can goods be sold to EOU without payment of GST as was being done prior to implementation of GST?

A. No, goods cannot be supplied to EOU without payment of taxes, however, as per Notification No. 48/2017 – Central Tax Dated 18th October 2017, domestic supplies to holder of Advance Authorization / EPCG and EOUs would be treated as deemed exports under section 147 of CGST / SGST Act and refund of tax paid on such supplies can be claimed by the supplier.

Following supplies have been treated as deemed exports under section 147 of the CGST Act:

Sr. No.	Description of supply
i.	Supply of goods by a registered person against Advance Authorisation Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,; Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.
ii.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.
iii.	Supply of goods by a registered person to Export Oriented Unit
iv.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017 – Customs, Dated the 30th June, 2017, (as amended) against Advance Authorization.

Explanation – For the purposes of this notification, -

“Advance Authorization” means an authorization issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015 – 20 for import or domestic procurement of inputs on pre – import basis for physical exports.

Export Promotion Capital Goods Authorization means an authorization issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015 – 20 for import of capital goods for physical exports.

“Export Oriented Unit” means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Par Unit or Bio – Technology Par Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015 – 20.

Q10. Will unutilized ITC at the end of the financial year (after introduction of GST) be refunded?

A. There is no such provision to allow refund of such unutilized ITC at the end of the financial year in the GST Law. It shall be carried forward to the next financial year.

Q11. Are SEZ Units liable to pay taxes on their inward supplies? Who will be eligible for refund of taxes paid on supplies to SEZ?

A. No. SEZ units shall not be charged with taxes for supplies made to them.

In respect of supplies to a SEZ unit or a SEZ developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations,

(b) supplier of services along with such evidence regarding receipt of services for authorised operations; as endorsed by the specified officer of the Zone.

Q12. Can the refund of balance in cash ledger be claimed?

A. Yes, as per provisions of Section 49 (6), the balance of cash ledger after payment of tax, interest, penalty, fee or any other amount payment refund can be claimed as per provisions of Section 54. Once the refund is claimed, the amount of credit of CGST/SGST/ IGST (as the case may be) would be reduced to that extent.

Q13. Whether separate applications need to be filed for refund in case of export of goods and export of services?

A. Yes, there shall be separate application and different procedure for refund of export of goods and export of services.

Q14. Who can file an application for refund in case of deemed export?

A. In terms of third proviso to Rule 89 inserted vide Notification No. 47/2017 – Central Tax Dated 10.10.2017, application for refund in case of deemed export can be filed by:

- the recipient of deemed export supplies; or
- the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund

Q15. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

A. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

15 REFUNDS

1 **Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.**

The company has made the following supplies during a tax period:

S. No.	Particulars	(₹)
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] **not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017*	10,00,000
(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods	6,00,000

The ITC available for the above tax period is as follows:

S. No.	Particulars	(₹)
(i)	On inputs (including ₹ 50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including ₹ 18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	(₹)
Exports of product 'A' to UK [Note 1]	Nil
Domestic supplies of taxable product 'B' during the period [Note 2]	75,000
Supply of goods to Export Oriented Unit [Note 3]	Nil
Export of exempt supplies [Note 4]	1,14,000
Total refund claim admissible	**1,89,000**

Notes:

1. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017. Therefore, as per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC in the case of zero rated supply made without payment of tax at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.

2. Refund of unutilised ITC is allowed in case of inverted duty structure, i.e. 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 GST Council [Clause (ii) of the first proviso to section 54(3) of the CGST Act, 2017].

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}$$

where-

"Net ITC" means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Adjusted total turnover" means the sum total of the value of:

(a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &

(b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

"Relevant period" means the period for which the claim has been filed.

Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000, Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000) x 10,00,000/ ₹ 28,00,000 **-** ₹ 50,000 = ₹ 75,000

3. As per section 2(39) of the CGST Act, 2017, deemed exports means such supplies of goods as may be notified under section 147 of the CGST Act, 2017. Supplies to EOU is notified as deemed export under section 147 vide *Notification No. 48/2017 CT dated 18.10.2017*. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1) of the CGST Rules, 2017]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

4. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

   Rule 89(4) of the CGST Rules, 2017 stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

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

where-

"Net ITC" means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both. RESTRICTED UPTO 1.5 TIMES OF DOMESTIC SUPPLY.

"Adjusted total turnover" means the same as explained in point 2 above. SEE AMENDMENTS LECTURES.

Here, Turnover of zero rated supply of goods = ₹ 6,00,000, Net ITC = ₹ 5,32,000 (ITC on outdoor catering disallowed under section 17(5) of CGST Act, 2017) and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point 2 above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,32,000 x 6,00,000/ ₹ 28,00,000 = ₹ 1,14,000.

2 Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A	500,000	5%	54,000	18%
B	350,000	5%	54,000	18%
C	100,000	18%	10,000	18%

***excluding GST**

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section

54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

Section 54(3)(ii) of the CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. 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.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}$$

where,-

A. **"Net ITC"** means input tax credit availed on inputs during the relevant period;

B. Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in specified manner and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or rule 89(4B) or both, if any,

during the relevant period.

C. Relevant period means the period for which the claim has been filed.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

Net ITC = ₹ 1,18,000 (₹ 54,000 + ₹ 54,000 + ₹ 10,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not as clarified vide Circular No. 79/53/2018-GST, dated 31.12.2018]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000)

Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 1,18,000)/ ₹ 9,50,000] - ₹ 25,000

= ₹ 37,105 (rounded off)

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

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 made without payment of tax:** Supply of goods or services or both to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies. 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.

4 State the cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.

Section 54(8) of the CGST Act, 2017 provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —

(a) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by notified class of applicants.

5 Wye Ltd. provides the following details of September 20XX for computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.

Particulars	**Amount(₹)**
Opening balance of ITC	**5,00,000**
ITC availed during the period, which includes the claim for refund made of ₹5,00,000 eligible under rule 89(4A)/89(4B) of the CGST Rules, 2007	**25,00,000**
Zero rated supply of goods made during the period without payment of tax under bond/ LUT, which include the supply of ₹ 1,00,00,000 for which refund claim is made under rule 89(4A)/89(4B) of the CGST Rules, 2017	**6,00,00,000**
Supply of goods other than zero rated supply	**3,00,00,000**

As per rule 89(4) of the CGST Rules, 2017, in case of zero-rated supply of goods without payment of tax under bond/LUT, refund of ITC is granted as per the following formula:

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

Net ITC excludes ITC availed for which refund is claimed under rule 89(4A)/(4B) of the CGST Rules, 2017. Further, turnover of zero-rated supply of goods and adjusted total turnover exclude turnover of supplies in respect of which refund is claimed under 89 (4A)/ (4B).

Accordingly, turnover of zero rated supply of goods = ₹ 5,00,00,000 [₹ 6,00,00,000 –

₹ 1,00,00,000];

Net ITC = ₹ 20,00,000 [₹ 25,00,000 – ₹ 5,00,000] and

Adjusted Total Turnover = ₹ 8,00,00,000 [₹ 6,00,00,000 + ₹ 3,00,00,000 – ₹ 1,00,00,000]

Thus, maximum refund amount under rule 89(4)

= ₹ 20,00,000 × ₹ 5,00,00,000 / ₹ 8,00,00,000 = ₹ 12,50,000.

6 Y Ltd. exported service valued at US $ 1,00,000. Supply of service was completed on 15th November 2019. Payment for this service was

received on 30th December 2019. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for₹ 6,00,000 on 31st January, 2020. The refund claim was sanctioned on 30th April, 2020. 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?

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, 2019 [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, 2020, interest @ 6% p.a. is payable.

This chapter includes GST Main Book 13 Q & A

Chapter 16: - Job Work

ICAI's Test Your Knowledge

Q1. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

A. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q2. What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?

A. If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus the principal would be liable to pay tax accordingly.

Q3. Who is responsible for the maintenance of proper accounts related to job work?

A. It is completely the responsibility of the principal to maintain proper accounts of job work related to inputs and capital goods.

Q4. Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie Engineers. As per agreement, the mould was to remain with the job worker as long as work was being sent to him. After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineers. GST was demanded from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker. How should they respond to this?

A. Genie Engineers should reply on the following lines:
Under section 19(6) of CGST Act, the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.
The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years from sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)]. However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.
Hence, Genie Engineers have correctly taken the ITC on moulds.

GST Main Book's Questions

Q1. Are transactions of repair included in job work?

A. The activity of carrying out repairs on goods will get covered on job work and thus would be covered by provisions of section 143.

Q2. Whether job worker has to be a different person or can some other unit of principal can also become job worker?

A. Job worker has been defined to mean undertaking of treatment or process by a person on the goods belonging to another registered taxable person. In view of the fact that another unit of the same person has been categorized as a distinct person. As a distinct person, it has got all the obligations as are applicable to separately registered person, it can be concluded that even if the job worker happens to be another unit of the same person, it would be covered by provisions of sec 143 of the GST Act.

Q3. What would happen in case job worked goods are not received back by the principal within a period of one year?

A. In case job worked goods are not received back by the principal within one year of their being sent for job work, it shall be deemed that such goods were supplied by the principal on the day when these goods were sent out and the principal is required to pay GST on the goods so sent for job work along with interest at the appropriate rate.

Q4. Can goods be sent by the principal for further job work from one job to another job worker?

A. Yes, inputs/capital goods can be sent for further job work from one job worker to another job worker. However, time limit of one year/three year to bring back inputs/capital goods after completion of job work, would be counted from the date when they were first sent for job work.

Q5. If job worker purchased additional material and incorporate the same in the goods received from the principal amount to supply?

A. Yes, it amounts to supply in the hands of the job worker as composite supply or otherwise.

Q6. Can a job worker take input credit on the inputs used in the process of job work?

A. Yes, the job worker is eligible to claim input tax credit since the processing charges received in respect of labour charges and the supply of additional goods added is taxable in the hands of the job worker.

Q7. If the job-worker subsequently registers, should the principal amend his registration by cancelling the job-workers premises as his additional place of business?

A. Yes.

Q8. Whether intermediate goods can also be sent for job work?

A. Yes. The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker.

Q9. Whether the goods of principal directly supplied from the job worker's premises will be included in the aggregate turnover of the job worker?

A. No, it will be included in the aggregate turnover of principal. However, the value of goods or services used by the job worker for carrying out the job work will be included in the value of services supplied by the job worker.

Q10. ABC Ltd. sends the goods to XYZ & Co. for making finished goods on 30-08-2017. What are the tax implications, in the following cases if GST @ 18% is levied:

i. XYZ & Co. sends the goods back to ABC Ltd. within one year of being sent.
ii. XYZ & Co. sells the goods directly to the customer on behalf of ABC Ltd.

A. As per Section 143 of CGST Act 2017, supply of goods to a job worker without payment of tax is permissible upon an intimation. In the given example, the implications are as follows:

- On supply of goods to XYZ & Co., as per the section 143 of CGST Act 2017, no tax shall be payable on supply of goods to XYZ & Co., However, the tax will be payable if finished goods is not returned before one year from 30-08-2017.
- XYZ & Co. sends the finished goods back to ABC Ltd.: As per the act, there is no tax liability on returning of goods back to the principal i.e. ABC Ltd. within a period of one year. Hence, post completion of Job work, no tax is leviable on finished goods returned to ABC Ltd.
- XYZ & Co. sells the finished goods on behalf of ABC Ltd.: Section 143 also allows the job worker to directly sell the goods on behalf of principal, wherein the liability to pay tax is of the principal and not the job worker. ABC Ltd. is liable to pay GST on sale of finished goods to customer by XYZ & Co.
  However, ABC Ltd. must declare the premises of XYZ & Co., as 'additional place of business' and the sale of finished goods will form part of aggregate turnover of ABC Ltd.
  Such a declaration is not required in case where:
  i. Job worker is registered under section 25; or
  ii. Principal is engaged in supply of notified goods.

Q11. ABC Ltd. sends the goods (inputs) to XYZ & Co. for further processing on 30-08-2017. The value of goods sent for Job work is Rs. 2,00,000. What are the tax implications, in following cases, if GST @ 18% is levied:

(i) XYZ & Co. sends the processed goods back to ABC Ltd on 30-11-2017
(ii) XYZ & Co. sends the processed goods back to ABC Ltd on 30-10-2018.

A. XYZ & Co. sends the processed goods back to ABC Ltd. on 30-11-2017: As per Section 143 of the Act, Principal can remove the goods without payment of tax and take input tax credit provided inputs sent for job work are returned back within one year of removal. Otherwise, it shall be treated as supply from principal to Job worker as on 30-08-2017 and subject to tax along with interest.

(i) In the present case, as the inputs are received back on 30-11-2017 i.e. before completion of one year, and hence no tax is payable.
(ii) XYZ & Co. sends the processed goods back to ABC Ltd. on 30-10-2018: In the present case, the goods are received after the period of one year and hence, ABC Ltd. needs to pay the tax along with the interest on the supply made by him to XYZ & Co. Hence, ABC Ltd. need to pay Rs. 18,000 (CGST) and Rs. 18,000 (SGST) along with specified interest.

Q12. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

A. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q13. Who is responsible for the maintenance of proper accounts related to job work?

A. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

16 JOB WORK

1. Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10.01.20XX, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth Rs. 4 lakh and moulds worth Rs. 50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes.Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth Rs. 1 lakh in the manufacture of pipes.It raised an invoice of Rs. 2 lakh as job charges for making pipes and returned the manufactured pipes through challan to Plasto Manufacturers on 20.10.20XX in the same financial year.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for Rs. 7.5 lakh on 20.10.20XX.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

(i) Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?

(ii) Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?

(iii) Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?

(iv) WhetherSudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?

(i) As per section 2(68) of the CGST Act, 2017, job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the manufacturing process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers) and when goods are manufactured for Solid Pipes, it is manufacture on own account as the pipes are manufactured from company's own raw material. Further, manufacture on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture of pipes on own account is a supply of goods.

(ii) It has been clarified vide *Circular No. 38/12/2018 GST dated 26.03.2018* that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

(iii) Section 143 of the CGST Act, 2017 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/ premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If the time frame of one year/ three years for bringing back or further supplying the inputs/ capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/ three years of being sent out.

Therefore, sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

(iv) As per section 15(2)(b) of the CGST Act, any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of the Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacturers. Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

2. Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 28.01.20XX. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to AlokPvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of ₹ 5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which

is sold by M/s. Prem Tools for ₹ 45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to AlokPvt. Ltd. on 03.12.20XX in the same financial year.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s Prem Tools. Also, give reason(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s Prem Tools.

As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as service even though metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by AlokPvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5) of the CGST Act. Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (₹)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000

GST @ 12% (B)	5,400
Total GST payable (A) + (B)	**95,400**

3 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 10-04-20XXand were received by the job worker on 15-04-20XX. 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?

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 15.04.20XX (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 15.04.20XX 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.

This chapter includes GST Main Book 18 Q & A
Please refer 2 Examples in GST Main Book

Chapter 17: - Assessment & Audit

ICAI's Test Your Knowledge

Q1. Is summary assessment order to be necessarily passed against the taxable person?
A. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

Q2. Whether principal of natural justice is must to be followed before passing assessment order against the taxable person?
A. Yes, principal of natural justice is must to be followed before passing assessment order against the taxable person seeking to impose any financial burden on him.

Q3. In what cases, assessment order passed by proper officer may be withdrawn?
A. Assessment Order passed by proper officer may be withdrawn in the following cases:-

i. Assessment of Non-filers of return – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order
ii. Summary Assessment – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

Q4. What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?
A. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

(a) Proceed to conduct audit under section 65 of the Act;
(b) Direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
(c) Undertake procedures of inspection, search and seizure under section 67 of the Act; or
(d) Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

Q5. Who can conduct audit of taxpayers?
A. There are three types of audit prescribed in the GST Act(s) as explained below:

(a) 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.

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

(Section 35(5) of the CGST Act)

(b) Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST Act)

(c) Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not with in the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST Act)

GST Main Book's Questions

Q1. Can a person who has furnished a return on self-assessment basis make a request for provisional assessment?

A. For provisional assessment a request needs to be made to proper officer for filing return on provisional basis. In case the taxable person furnishes the return on self-assessment basis, he foregoes the right to make an application for permission to furnish return and pay tax on provisional basis.

Q2. Please provide brief summary on various assessments.

Section	Type of Assessment	Assessment by	Conditions precedent to assessment
59	Self-assessment	Taxable Person	Where registered taxable person assesses his tax liability himself.
60	Provisional assessment	Proper Officer	Where registered taxable person is unable to determine following: • Value of supply, and/or • Rate of applicable tax on supply
61	Scrutiny assessment	Proper Officer	Verifying the correctness of the return by scrutinizing the return and particulars furnished by taxable person.
62	Assessment of non-fliers of return (Best Judgement Assessment)	Proper Officer	Where the registered taxable person fails to furnish return U/s 39 or Sec. 45 even after service of notice U/s 46.
63	Assessment of unregistered person (Best judgment assessment)	Proper Officer	Where a taxable person fails to obtain registration, even though liable to do so.
64	Summary Assessment	Proper Officer	To protect the interest of revenue with previous permission of Additional/Joint Commissioner.

Q3. Audit has to be completed within a stipulated period of three months (subject to extension) from the date of commencement. What is implied by date of commencement of audit?

A. 'Commencement of audit' shall imply that date on which the records and other documents, called for by the tax authorities, are made available by the taxable person or date of actual institution of audit at the place of business, whichever is later. The period of three months can be extended by six months for reasons to be recorded in writing.

Example:

Date of which documents requested	1st April 2017
Date of which documents/recorded made available	20th April 2017
Date of actual institution of audit at auditee's placed	5th May 2017
The date of commencement of audit will be taken as	5th May 2017
Date by which audit should be completed in normal course	4th Aug 2017
Last date by which audit should be completed (including extended period)	4th Feb 2018

Q4. What is the difference between the two audit Sec. 65 and Sec. 66?

Issue	Audit U/s 65	Audit U/s 66
Trigger Point	General audit; audit of business transaction, no specific reason to be cited	Nature & complexity of case, interest of revenue, incorrect value of supply or abnormal availment of credit
Nature of Audit	Departmental Audit	Special Audit
Conducted by	Officers of department authorized by commissioner	Chartered Accountant/Cost Accountant appointed by Commissioner
Frequency	Discretionary	Discretionary
Prior notice to auditee	Yes, 15 days' notice is required	No such notice/intimation envisaged
Time for conclusion of audit	3 months, further extension of 6 months allowed	90 days, further extension of 90 days allowed
Audit findings report	To be intimated soon on completion of audit	Report to Deputy/Assistant Commissioner
Audit expenses	Borne by department	Borne by department
Opportunity of being heard	No specific provision	Yes, where material gathered during audit is to be used in any proceedings against the auditee
Action based on report	If results in demand of tax, shall be recovered U/s 73 or 74	If results in demand of tax, shall be recovered U/s 73 or 74

Q5. What would be the process of Scrutiny of Returns?

A. The proper officer would inform registered person of the discrepancies noticed during the course of scrutiny of returns. The proceedings would be dropped if the explanation submitted by the registered person is found acceptable. However, if no explanation is furnished within the stipulated period by the registered person or no corrective action is taken by the registered person after accepting discrepancy, proper officer may initiate appropriate action against the registered person.

Q6. What are the consequences on conclusion of provisional assessment by way of passing final assessment order in so far as short/excess remittance of tax is concerned?

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

- Additional tax liability: In case of short remittance of taxes in terms of final assessment order, the additional tax liability, if any should be remitted along with interest at the rate prescribed U/s 50 (1) for delay in remittance of taxes viz., from the 1st day after the due date of remittance of taxes as prescribed U/s 39 (7) till the date of actual payment.
- Excess remittance of tax on provisional basis: In case of excess remittance of taxes in terms of final assessment order, the registered person is entitled to refund of such excess remittance in the manner as provided in Section 54 (8) along with interest as provided under Section 56.

Q7. Whether any time limit has been specified to issue notice for scrutiny?

A. No, the provisions relating to scrutiny assessments do not specify time limit for issuing notice for scrutiny of assessments.

Q8. Whether any reason to believe or evidence is required for initiate audit U/s 65?

A. No, Section 65 doesn't specify any such requirements. Commissioner can initiate audit on any taxable person for such period, at such frequency and in such manner as may be prescribed.

Q9. Is there any additional opportunity provided for taxable person to submit a return even after passing an assessment order under Section 62 (1)?

A. Yes, if the registered person furnishes a valid return within 30 days from the date of service of best judgement assessment order u/s 62 (1), the said assessment order shall be deemed to have been withdrawn.

Q10. Whether Self-Assessment and provisional assessment are mutually exclusive?

A. Yes, if the taxable person opts for self-assessment, he cannot opt for provisional assessment for the same period for same supply. However, he can opt for provisional assessment if he is unable to determine taxable value / tax liability/ (rate of tax) for any subsequent periods.

Q11. Whether audit by officer can be done for a person other than registered person U/s 65?

A. Audit by officer cannot be ordered for a person who is not registered even if he is required to be registered as per the provisions of the law. [S. 65(1)]

Q12. What process of audit is required to be followed by the officer in case audit is conducted U/s 65?

A. Following process is to be followed for conduct of audit by officer:

1. Proper Officer shall verify the documents, correctness of turnover, exemptions and deductions claimed, the rate of tax applied, input tax credit availed and utilized and refund claimed. [R.101(3)]
2. Proper Officer shall record the observations in audit notes. [R. 101(3)]
3. Proper Officer may inform discrepancies noticed during audit to registered person [R.101(4)]
4. Registered Person shall reply to discrepancies [R. 101(4)]
5. Proper officer shall finalize findings of audit only after due consideration of reply [R. 101(4)]
6. On the conclusion of audit, Proper Officer shall inform the Registered Person whose records are audited about the:
   - findings
   - reasons for findings,
   - assessee's rights and obligations. [S. 65(6)]

7. Information of findings, reasons, right and obligations shall be made within 30 days (in FORM GST ADT-02) [S. 65(6)]

Q13. What action will be initiated when the audit conducted u/s 65(1) results in a demand?

A. Where the audit u/s 65(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under Section 73 or Section 74.

Q14. At what stage the directions of special audit can be given?

A. At any stage of scrutiny, inquiry, investigation or any other proceedings, having regard to the nature and complexity of the case and interest of revenue, a direction to Registered Person to get its accounts examined and audited can be given [S.66(1)]

Q15. Whether already audited accounts are also covered by special audit?

A. Special Audit may be directed even if accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.[S.66(3)]

Q16. How to deal with detection of short paid taxes as a result of special audit?

A. Where audit results in detection of tax not paid/short paid /erroneous paid or ITC wrongly availed or utilized, Proper Officer may initiate action u/s 73 or 74 [S.66(6)]

Q17. Whether the phrase "nature and complexity of the case" is defined in the Act?

A. No, Section 66 does not define the phrase "nature and complexity of the case'. However, there is enough jurisprudence under the Income Tax Laws to determine what will constitute complexity of the case.

Q18. Who can conduct audit of taxpayers?

A. There are three types of audit prescribed in the GST Act(s) as explained below:

(d) 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.

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

(Section 35(5) of the CGST Act)

(a) Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST Act)

(b) Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not with in the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST Act)

17 ASSESSMENT AND AUDIT

1 Kulbhushan& Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan& Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of ₹ 1,80,000 becomes due on 1st consignment whereas a tax of ₹ 4,20,000 becomes refundable on 2nd consignment.

Kulbhushan & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by Kulbhushan & Sons in the above case.

Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25.01.20XXunder provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Kulbhushan& Sons is liable to pay following interest in respect of 1st consignment:

= ₹ 1,80,000 × 18% × 48/365

= ₹ 4,261 (rounded off)

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Kulbhushan& Sonson tax refunded in respect of 2nd consignment.

2 Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?

Assessment order passed by the proper officer may be withdrawn in following cases:-

(i) **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within 30 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

(ii) **Summary assessment-**As per section 64(2) of the CGST Act, 2017,a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

3 Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 20XX. The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 20XX.

Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 20XX, a tax of ₹ 1,20,000 and ₹ 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of ₹ 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 20XX and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8th September, 20XX, whereas of 3rd consignment on 18th September, 20XX. Customers of Divy Trader who purchased the consignments have not taken Input Tax Credit (ITC).

Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader.

Where tax becomes due consequent to order of final assessment, interest is payable @ 18% p.a., from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 28.04.20XX under provisional assessment is 20.05.20XX.

Thus, interest payable in respect of 2nd consignment

= ₹ 1,20,000 × 18% × 53 [21.05.20XX – 12.07.20XX]/365

= ₹ 3,136 (rounded off)

Further, section 56 of CGST Act, 2017 provides that where tax becomes refundable consequent to the order of final assessment, interest is receivable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of refund application till the date of refund of such tax.

In the given case, since refund of tax of 1st consignment has been paid on 08.09.20XX which is within 60 days from the date of receipt of application of refund (12.07.20XX), interest is not receivable on tax refunded in respect of 1st consignment.

However, interest receivable in respect of 3rd consignment is as follows:

60 days from the date of receiving the refund application expire on 10.09.20XX.

= ₹ 1,50,000 × 6% × 8 [11.09.20XX-18.09.20XX]/365

= ₹197 (rounded off).

4 Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.

Audit by Tax authorities under section 65 of the CGST Act, 2017:-

1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

2 The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

5 Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of the CGST Act, 2017.

If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny under section 61 of the CGST Act, 2017, the proper officer may:

(i) conduct audit of the registered person under scrutiny,

(ii) direct the registered person under scrutiny to get his records including books of account examined and audited by the Chartered Accountant or a Cost Accountant,

(iii) the Chartered Accountant or a Cost Accountant shall be a person/firm as nominated by the Commissioner,

iv) exercise the powers of inspection, search and seizure with respect to registered person under scrutiny, or

(v) proceed to determine the tax and other dues of the registered person under scrutiny.

6 Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.

As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

7 How many types of audit are prescribed under GST Act. Briefly explain each one of them.

(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].

This chapter includes GST Main Book 10 Q & A
Please refer 1 Example in GST Main Book

Chapter 18: - Inspection, Search, Seizure & Arrest

ICAI's Test Your Knowledge

Q1. Who can order for carrying out "Inspection" and under what circumstances?
Can any premises be inspected by CGST officers?

A. As per Section 67(1), Inspection can be carried out by any officer of Central tax only upon a written authorization in Form GST INS-01 given by a proper officer not below the rank of Joint Commissioner. Such proper officer can give such authorization only if he has reasons to believe that the person concerned has –

(a) suppressed any transaction of supply;
(b) suppressed stock of goods in hand;
(c) claimed excess input tax credit;
(d) contravened any provisions of this Act or rules made thereunder to evade tax;
(e) a transporter or an owner or operator of a warehouse or godown or any other place, has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

CGST officer authorized by the proper officer not below the rank of Joint Commissioner shall have the powers to carry out inspection of any of the following places / premises:

(a) any place of business of a taxable person;
(b) any place of business of a person engaged in the business of transporting goods;
(c) any place of business of an owner or an operator of a warehouse or godown;
(d) any other place

Q2. Who can order for search and seizure under the provisions of CGST Act?

A. Proper officer not below the rank of Joint Commissioner can himself or authorize any other CGST officer in FORM GST INS-01 (Chapter-XVII-Inspection, Search and Seizure of the CGST Rules) to carry out search and seize goods, documents, books or things. Such authorization can be given only where the proper officer has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted / hidden in any place.
Where any goods, documents, books or things are liable for seizure, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

Q3. What powers can be exercised by an officer during valid search?

A. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under the Act) from the premises searched. During search, the officer has the power to seal or break open the door of the any premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah, electronic devices, box, receptacle if access to such almirah, electronic devices, box, receptacle is denied and in which any goods, account, registers or documents are suspected to be concealed.

Q4. What are the duties of the person to whom summons has been issued?

A. A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject, which is the subject matter of examination and to produce such documents and other things as may be required.

Q5. What is meant by the term "arrest"? When can the proper officer authorize 'arrest' of any person under CGST Act?

A. The term 'arrest' has not been defined in the GST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant. The Commissioner of CGST, by order, can authorize any CGST officer to arrest a person, if he has reasons to believe that such person has committed an offence specified in clause (a) or (b) or (c) or (d) of section 132(1) which is punishable under clause (i) or (ii) of section 132(1) or section 132(2) of the Act. This essentially means that a person can be arrested only when the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs. 2 Crores or where a person has earlier been convicted for an offence under section 132 of the CGST Act.

GST Main Book's Questions

Q1. What is the distinction in law between 'Seizure' and 'Detention'?

A. Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Q2. What is meant by the expression 'reason to believe'?

A. The expression, 'reason to believe' is not defined anywhere but needs to be understood through judicial interpretation, some of which are as follows:

In ITO v Lakhmani Mewal Das (1976) 103 ITR 437 (SC), it was held that the expression 'reason to believe' doesn't mean a purely subjective satisfaction on the part of the income-tax officer. The reason must be held in good faith. It cannot be merely a pretence. In CIT v Kelvinator India Ltd. (2010) 320 ITR 562 (SC), it was held that there must be tangible material for the formation of the belief in the context of search.

As per Sec. 26 of IPC, a person is said to have reason to believe a thing, if he has sufficient cause to believe that thing, but not otherwise.

Q3. Will access to place of business premises U/s 71 also include unregistered premises?

A. Perhaps, yes. This provision facilitates access to a business premise which is not registered by a taxable person as a principal or additional place of business but has books of accounts, documents, computers etc. which are required for audit or verification of accounts of a taxable person.

Q4. Whether the list of documents/information is exhaustive and no other document can be inspected?

A. No, the list of documents is considered illustrative. Certain documents are specifically listed in this provision but if any other relevant records are maintained at the said premises, they may also be required to be produced.

Q5. Is it mandatory that such 'reasons to believe' has to be recorded in writing by the proper officer, before issuing authorization for Inspection or Search and Seizure?

A. Although the officer is not required to state the reasons for such belief before issuing an authorization for search, but he should disclose the material on which his belief was formed. 'Reason to believe' need not be recorded invariably in each case.

Q6. Can the proper officer access business premises of a registered taxable person?

A. Yes. An audit party of CGST, deputed by proper officer or a cost accountant or chartered accountant nominated under section 66 have access to any business premises without issuance of a search warrant for the purposes of revenue carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of. Further, in terms of Section 71(1), an officer authorised by a proper officer not below the rank of Joint Commissioner can also have access business premises of a registered person.

Q7. What is the meaning of 'Inspection', 'Search' & 'Seizure'?

A.

Inspection	Search	Seizure
It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.	The term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.	In Law Lexicon Dictionary, 'seizure', is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Q8. What is meant by term 'Arrest' and 'Cognizable & Non Cognizable Offence'?

A.

Arrest	Cognizable Offence	Non Cognizable Offence
The term 'arrest' has not been defined in the CGST/SGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.	Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.	Non-cognizable offence means an offence in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without the permission of a Court.

Q9. What are the safeguards provided for a person who is placed under arrest?

A. The following are the safeguards provided for a person who is placed under arrest:

a) If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a Magistrate within 24 hours of his arrest;

b) If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Q10. Which are the places of business / premises which can be inspected by the CGST officer?

A. CGST officer authorized by the proper officer not below the rank of Joint Commissioner shall have the powers to carry out inspection of any of the following places / premises:

a) any place of business of a taxable person;

b) any place of business of a person engaged in the business of transporting goods;

c) any place of business of an owner or an operator of a warehouse or godown or any other place;

18 INSPECTION, SEARCH, SEIZURE AND ARREST

1 Explain the situation in which access to business premises is allowed under section 71 of the CGST Act, 2017? Also, list the records which are to be produced during access to business premises?

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

(ii) trial balance or its equivalent.

(iii) statements of annual financial accounts, duly audited.

(iv) cost audit report, if any.

(v) the income - tax audit report, if any.

(vi) any other relevant record.

2 Explain the safeguards provided under section 69 of CGST Act, 2017, to a person who is placed under arrest?

Section 69 of CGST Act, 2017 provides following safeguards to a person who is placed under arrest:

(a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.

(b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

(c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3) of CGST Act, 2017.

This chapter includes GST Main Book 34 Q & A
Please refer 6 Examples in GST Main Book

Chapter 19: - Demands & Recovery

ICAI's Test Your Knowledge

Q1. Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth Rs. 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

A. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, & has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Q2. Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74 of the CGST Act, 2017.

A. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

i. In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
ii. In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

Q3. Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.

A. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 of the CGST Act, 2017 are as under:

i. In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to [Section 73(10)].
ii. In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to [Section 74(10)].

Q4. A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?

A. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

Q5. Briefly discuss the modes of recovery of tax available to the proper officer.

A. The proper officer may recover the dues in following manner:

(a) Deduction of dues from the amount owned by the tax authorities payable to such person.
(b) Recovery by way of detaining and selling any goods belonging to such person;
(c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
(d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
(e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
(g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
(h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

GST Main Book's Questions

Q1. Will Omission on the part of the taxable person to provide correct information constitute 'suppression of facts' for the purpose of Section 74 of the CGST Act, 2017? Write a brief note with reasons.

A. Yes. As per explanation to Section 74 of CGST Act, 2017, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Thus, omission on the part of the taxable person to provide correct information constitute "suppression of facts".

Q2. A ltd. is entitled for exemption from tax under GST Act. It collected tax from its buyers in Nov'17. It has not deposited the said amount collected as GST with the Government. What are the consequences of not depositing the same with Government as provided U/s 76?

A. It is mandatory to pay amount, collected from other person representing tax under GST Act, to the Government [Sec. 76]. Every person who has collected from any other person any amount as representing the tax under GST Act, and has not the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not. Proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined along with interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

Q3. Can the person chargeable with the tax seek adjournment of hearings?

A. Yes, the person chargeable with tax can seek adjournment of hearing and he can be granted time in case sufficient cause is shown by person chargeable with tax. The hearing will be adjourned for reasons to be recorded in writing. As provided in Sec. 75 (5) of the GST Act, no such adjournments shall be provided for more than 3 times.

Q4. Would taxable person would be liable for payment of interest besides paying the tax U/s 77?

A. No, Sec. 77 (2) provides that such taxable person would not be liable for payment of interest on the amount of central tax or state tax as the case may be.

Q5. Can the refund claim on account of Sec. 77 be subjected to provision of undue enrichment?

A. No, the claim of refund due to Sec. 77 will not be subjected to provision of undue enrichment. This has also been clarified by the Government in flier of refunds issued by CBIC.

Q6. Can GST be collected, during a search operation, without an assessment order being passed by the concerned authority?

A. No. In case law Chitra Builder Pvt. Ltd. V Addl. Commi. Of CCex & ST [2013] [Mad], it was held that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and without following the procedures established by law.

Q7. When can extended period of limitation can be invoked?

A. U/s 74, extended period of limitation can be invoked if the GST has not been paid or has been short-paid or erroneously refunded by reason of fraud or wilful mis-statement or suppression of facts or contravention of any of the provision of CGST Act or of rules made thereunder with an intent to evade the payment of GST.

Q8. M/s ABC Ltd., were granted a refund by the Appellate Authority under CGST Act, 2017. The jurisdictional Assistant Commissioner has issued a notice U/s 73 demanding the amount of refund on the ground that such a refund is erroneous. Briefly discuss whether the action taken by Assistance Commissioner of Central Excise is valid in law.

A. It is well settled law that if an order passed by statutory authority is not challenged by way of appeal/revision or otherwise and the same becomes final, the said order holds the field and the same has to be given full effect to. Nothing can be done and/or adjudicated, which is in contravention of what has been held in that order. In overseas Engineers V/s CCEx [2007] [Tri], it was held that where orders sanctioning refund were not appealed against or reviewed by Department, then, recovery from the appellant of refund paid to him, by issuance of show cause notice U/s 73 is not tenable/sustainable.

Q9. How to compute period of limitation referred to in Section 73 (10) or Section 74 (10) where an issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of the revenue in some other proceedings and an appeal in the Appellate Tribunal or the High Court or the Supreme Court against such decision is pending?

A. While computing the period of limitation referred to in Section 73 (10) or Section 74 (10), the period spent between the date of the decision of the Appellate Authority/Appellate Tribunal/High Court and the date of the decision of the Appellate Tribunal/High Court/Supreme Court as the case may be, shall be excluded.

Q10. What will be the recourse available to the proper officer in case of default in payment of any installment on its due date by the taxable person?

A. Where there is default in payment of any one installment on its due date by the taxable person, the whole outstanding balance payable on such date shall become due and payable forthwith, without any further notice. The proper officer can initiate recovery of dues.

Q11. In case the person does not deposit tax collected in contravention of Section 76, what is the course of action available to the proper officer?

A. The proper officer shall issue notice requiring him to show cause as to

- Why the amount so collected as tax should not be paid by him to the Government;
- Why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of the Act; and
- The proper officer shall adjudicate the matter and issue order within 1 year from the date of issue of the show cause notice.

Q12. Whether the amount of tax, interest and penalty demanded in the order can exceed the amount specified in the notice?

A. No. The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

Q13. Please explain time limit for issue of notice U/s 73 & U/s 74 by giving example.

A. Under Section 73: Let say, in case Mr. A has not paid the tax on a transaction considering it to be exempt for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least three months prior to the last date of order of demand.

The order of demand shall be served within 3 years from 31st December 2018 i.e. 31st December 2021. Therefore, show cause notice shall be required to be served by 30th September, 2021.

Under Section 74: Let say, in case Mr. A has not paid the tax on a transaction for the tax period of August 2017. The due date of filing annual return for which will be 31st December 2018. The proper officer may serve the notice at least six months prior to the last date of order of demand

The order of demand shall be served within 5 years from 31st December 2018 i.e. 31st December 2023. Therefore, show cause notice shall be required to be served by 30th June, 2023.

Q14. Whether proper officer can issue similar show cause notice for any periods other than those covered under section 73(1)?

A. Yes, it can be issued for subsequent periods on same grounds raised in the show cause notice. The proper officer may serve a statement under section 73(3) along with a summary electronically in Form GST DRC-02 containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized where the grounds relied upon by the proper officer for such periods are the same as are mentioned in the earlier notice issued under section 73(1). The service of such statement shall be deemed to be service of show cause notice on the person chargeable with tax.

Q15. Whether notice for a period of 5 years is valid even if charge of suppression, fraud and misstatement are not sustained?

A. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time would be applicable for date of issue of order.

Q16. What happens when the Notice issued under Section 74(1) is held not sustainable by any Appellate Authority or Tribunal or Court for the reason that the charges of fraud or any willful misstatement or suppression of facts to evade tax has not been established?
A. The proper officer shall determine the tax payable by such person deeming as if the Notice were issued under section 73(1).

Q17. What is the time limit for issue of order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court?
A. The order shall be issued within 2 years from the date of communication of the said direction.

Q18. What happens in cases where Notice is issued but order has not been passed within 3 years (Section 73) or 5 years (Section 74)?
A. The adjudication proceedings shall be deemed to be concluded if the order is not issued within the limitation period of 3 years under section 73(10) or 5 years under section 74(10), as the case may be.

Q19. Is interest applicable in all cases, even if not specifically mentioned?
A. Yes, interest is applicable whenever the tax is payable whether or not it is specifically mentioned.

Q20. In case the person does not deposit tax collected in contravention of Section 76, is the same recoverable with interest?
A. Yes. In addition to the amount payable by him, the person is required to pay interest under Section 50 on the same from the date of collection of the amount till the date such amount is paid to the Government.

Q21. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid to Government?
A. No. Notice can be issued on detection of such cases without any time limit. Once show cause notice is issued, the proper officer shall pass the order within 1 year from the date of issue of such notice.

Q22. How is the amount of surplus left after adjustment with tax payable dealt with?
A. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q23. What happens if the tax demand is not paid within the time limit prescribed under section 78?
A. The proper officer shall initiate recovery proceedings if the tax demand is not paid within 3 months from the date of service of the order.

Q24. Whether the proper officer can require a taxable person to make payment of tax demand within shorter period lesser than 3 months?
A. Yes. If it is expedient in the interest of the revenue, the proper officer, after recording reasons in writing, may require taxable person to make such payment within shorter period as may be prescribed by him.

Q25. What are the methods of recovery as prescribed in Section 79?
A.

- Deduction out of any money owing to defaulter.
- By detaining and selling the goods belonging to defaulter.
- Recovery from any other person who owes money to defaulter.

— Collection by detention of any movable or immovable property.
— Recovery through District Collector.
— Recovery through Magistrate.

Q26. Whether proper officer can allow payment of self-assessed tax in installments U/s 80?
A. No. The proper officer shall have the power to allow payment of any amount due under this Act in installments on tax other than the self-assessed tax.

Q27. Under which proceedings the property of a taxable person can be provisional attached?
A. Provisional attachment shall be applicable for the following pending proceedings of a taxable person:
(a) Assessment of non-filers of returns. (Section 62)
(b) Assessment of unregistered persons. (Section 63)
(c) Summary assessment in certain special cases. (Section 64)
(d) Inspection, search and seizure. (Section 67)
(e) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts. (Section 73)
(f) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts. (Section 74)

During the pendency of any proceedings under section 62, 63, 64, 67, 73 or 74, the Commissioner may pass an order in Form GST DRC-22 to attach any property including bank account belonging to a taxable person provisionally for the purpose of protecting the interest of the Government revenue.

Q28. Whether any amount payable by the taxable person under this Act is a first charge on his property?
A. Yes. As per section 82 of CGST Act 2017, notwithstanding anything to the contrary contained in any law for the time being force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, first charge shall be on –
a) the property of taxable person in respect of any amount payable by such taxable person, or
b) the property of any other person on account of tax, interest or penalty which he is liable to pay to the Government.

Q29. In case of recovery of SGST/UTGST by CGST officer in the course of recovery of CGST, where the total amount recovered is Rs. 5 Crore whereas the amounts due were Rs. 5 Crores of CGST and Rs. 10 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?
A. Rs. 5 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 1:2.

Q30. 'A' requested the Commissioner to provide the benefit to pay Rs. 5,00,000/- under installments. Commissioner directs 'A' to make the payment in five monthly installments. How to pay the interest?
A. It is assumed that the actual date on which the tax was required to be paid as 06.06.2015. Benefit of installment was granted by Commissioner on 25.05.2016 to be paid w.e.f. 02.06.2016 onwards over 5 installments.

Payment date	Interest to be paid as per section 45 – No of days	Amount on which interest to be paid
1st Installment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	Rs. 100,000
2nd Installment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	Rs. 100,000
3rd Installment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	Rs. 100,000

4th Installment - 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	Rs. 100,000
5th Installment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	Rs. 100,000

Q31. Please provide comment for below with respect to provision U/s 81.

- Mr. Defrauder was served with a notice of demand for Rs. 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worth Rs. 35 Lakhs under his name to the name of his wife for a consideration of Rs. 10,000/-. Is this act of Mr. Defrauder valid?
- In the above illustration, if transfer of property was for a consideration of Rs. 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?
- On Mr. Perfect, notice was issued on 10th June 2018. However, the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for Rs. 35 lakhs. Is the sale void or valid?

A.

- As per section 81, the said transfer would be void and the property worth Rs. 35 Lakhs would be considered still to be in the hands of Mr. Defrauder.
- In this case the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.
- The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

Q32. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued U/s 84?

A. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

- the Commissioner is required to issue fresh notice of demand only for enhance demand.
- If already recovery proceedings of Govt. dues is served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q33. Checkernot has self-assessed tax liability under IGST Act, 2017, as Rs. 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records:

Date of collection of tax 18th December, 2017

Date of payment of tax 26th February, 2018

No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability, even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN. (CA Final May 2018 Old)

A. Due date for payment of tax collected on 18.12.2017 is 20.01.2018. However, since tax is actually paid on 26.02.2018, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with Notification No. 13/2017 CT Dated 28.06.2017.

Amount of interest is: = Rs. 80,000 × 18% × 37/365 = Rs. 1,460 (rounded off)

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, inter alia, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to
(i) 10% of tax, viz., Rs. 8,000 or
(ii) Rs. 10,000,
whichever is higher,
is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of Rs. 10,000 will have to be paid by Checkernot.

However, CBIC vide Circular No. 76/50/2018-GST dated 31-12-2018 has clarified that penalty U/s 73 (11) can be levied only when show cause notice is issued as per the provisions of Section 73 of the Act. No penalty in accordance with Section 73 (11) of the CGST Act should be levied in cases where the return in Form GSTR – 3B has been filed after the due date of filing such return. However, general penalty U/s 125 can be imposed in such cases.

Q34. 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. Advice 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.

(CA Final Nov 2018 Old)

A.

(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.

19 DEMAND & RECOVERY

1 Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73 of the CGST Act, 2017. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73.

As per section 73 of the CGST Act, 2017, a show cause notice can be issued by the proper officer if it appears to him that:

- tax has not been paid; or
- tax has been short paid; or
- tax has been erroneously refunded; or
- input tax credit has been wrongly availed or utilized,

for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax.

The notice should be issued at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter [Sub-section (2) of section 73].

The order referred herein has to be passed within three years from the due date for furnishing the annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund [Sub-section (10) of section 73].

Thus, the time-limit for issuance of show cause notice is 2 years and 9 months from the due date of filing annual return for the financial year to which the demand pertains or from the date of erroneous refund. As per section 44(1) of the CGST Act, 2017, the due date of filing annual return for a financial year is 31^{st} day of December following the end of such financial year.

2 Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

The provisions of section 76 of the CGST Act, 2017 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 of the CGST Act, 2017 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

3 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.

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 ison 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.

4 Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31.01.2021 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. Everest Technologies Private Limited contends that the show cause notice issued to it is time-barred in law.

You are required to examine the technical veracity of the contention of Everest Technologies Private Limited.

The contention of Everest Technologies Private Limited is not valid in law. The SCN under section 73(1) of the CGST Act 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 [Section 73(2) of the CGST Act]. The adjudication order under section 73(10) of the CGST Act 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/not paid tax relates to.

The due date for furnishing annual return for a financial year is 31st day of December following the end of such financial year [Section 44 of the CGST Act]. Thus, SCN under section 73(1) of the CGST Act 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/not paid tax relates to.

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. Since in the given case, the notice has been issued on 31.01.2021, notice is not time-barred.

5 Mr. Anant Kumar Gupta self-assessed his tax liability as ₹ 90,000 for the month of April 20XX but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-20XX which was received by Mr. Anant Kumar Gupta on 14-08-20XX.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25/08/20XX and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of 90000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief.

Due date for payment of tax for the month of April, 20XX is 20.05.20XX.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax within 30 days of due date [i.e. 20.05.20XX], penalty equivalent to:

(i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or

(ii) ₹ 10,000,

whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on Mr. Anant Kumar Gupta is correct, but the amount of penalty₹ 45,000 is not correct.

6 On 05.07.20XX, a show cause notice for ₹ 5,00,000 was issued to Mr. Vijay Kumar Sharma demanding short payment of GST of ₹ 4,50,000 for the month of January, 20XX and also interest of ₹ 50,000.

Mr. Sharma raised objections and after personal hearing on 30.08.20XX, adjudicating authority passed the final order for ₹ 3,50,000 for GST, without any reference with regard to payment of interest.

Mr. Sharma deposited the tax of ₹ 3,50,000 on 02.09.20XX and informed the department on the same day. Subsequently, on 15.09.20XX, department demanded payment of interest of ₹ 60,000 on GST of ₹ 3,50,000.

Mr. Vijay Kumar Sharma is not ready to pay any interest. His contention is that he is not liable for interest because he deposited all the amount specified in the final adjudication order.

Examine with a brief note the validity of the action taken by the Department with reference to provisions of the CGST Act, 2017.

As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Vijay Kumar Sharma will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be ₹ 50,000.

7 Checkernot has self-assessed tax liability under IGST Act, 2017, as ₹ 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records:

Date of collection of tax	**18th September, 20XX**
Date of payment of tax	**26th November, 20XX**

No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability, even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN.

Due date for payment of tax collected on 18.09.20XXis 20.10.20XX. However, since tax is actually paid on 26.11.20XX, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with *Notification No. 13/2017 CT dated 28.06.2017*. Amount of interest is:

= ₹ 80,000 × 18% × 37/365 = ₹ 1,460 (rounded off)

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, *inter alia,* option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to

(i) 10% of tax, viz., ₹ 8,000 or

(ii) ₹ 10,000,

whichever is higher,

is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of ₹ 10,000 will have to be paid by Checkernot. However, such penalty is payable when the PO isuues an order in this behalf.

8 Discuss briefly the procedure for issue of adjudication order under section 74(9) &(11) and the time limit for passing adjudication order under section 74(10) of the CGST Act, 2017.

The procedure for issue of adjudication order under section 74 of CGST Act, 2017 is as under:-

Where a show cause notice/statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defence, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the show cause notice.

The proper officer after considering the representation, if any, made by the person chargeable with tax, pass an order determining the amount of tax, interest and penalty due from such person [Section 74(9)].

Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74(11)].

As per section 74(10) of CGST Act, 2017, the proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the financial year to which the tax not paid/short paid/input tax credit wrongly availed/ utilised relates to or within 5 years from the date of erroneous refund.

9 A show cause notice was issued demanding GST of ₹ 1,80,180 for the month of July, 20XX on 1st October, 20XX. 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, 20XX, is issued.

(i) Advice after issue of order[1]:

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 corrigendum[2]

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 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.

10 Mr. X, registered under GST Act, had made short payment of GST for the month of July 20XX.

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

[2]*It has been assumed that corrigendum has been issued in respect of show cause notice.*

He does not want a show cause notice to be served on him by proper officer. Advice 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.

(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.

This chapter includes GST Main Book 7 Q & A
Please refer 2 Examples in GST Main Book

Chapter 20: - Liability to pay in certain cases

ICAI's Test Your Knowledge

Q1. Avataar Industries, a registered person under GST, has sold whole of its business to Rolex Manufacturers. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

A. Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

Q2. ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86 of the CGST Act.

A. Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

Q3. A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.

A. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Q4. In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.

A. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Q5. What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?

A. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

GST Main Book's Questions

Q1. A person, liable to pay GST, interest and penalty under GST Act, dies. Who will be liable to pay his dues after his death if business carried on by such person legal representative or business carried on by such person who has dies, is discontinued after his death?

A. As per Section 93, if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

If a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

Q2. ABC Ltd. engages XYZ Ltd. as an agent to sell goods on its behalf. XYZ Ltd. sells goods to DEF Ltd. on behalf of ABC Ltd. Who will be liable U/s 86?

A. Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act. Thus, in the given case, ABC Ltd. and XYZ Ltd. shall, jointly and severally, be liable to pay GST payable on such goods.

Q3. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

A. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence the general principle of law has no application and the Guardian, Trustee or Agent cannot escape such liability.

Q4. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

A. The dues are recoverable from the Court of Wards as if he is conducting the business for himself. Mr. Amit Roy is appointed as manager of Mr. Sumit, to manage the estate of Mr. Sumit, who owns the business of glasses. Mr. Sumit is liable to pay Rs. 10 Lakhs of GST, interest & penalty to the Government. The department can recover such dues from Mr. Amit Roy who is managing the estates of Mr. Sumit by invoking Section 92.

Q5. Whether the director of a Private Limited Company is liable for the payment of tax in respect of the supply made by or to such Private Company?

A. Yes. Every director of the private company during the period for which. tax, interest or penalty due in respect of any supply of goods or services or both, is not recovered shall jointly and severally be liable for the payment of such tax, interest or penalty, unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company.

Q6. Whether the liability of the director still exists if such Private Limited Company is converted into Public Limited Company?

A. No. If a Private Limited Company is converted into a Public Limited Company, then the provisions of this section do not apply. However, any other personal penalty could be imposed on the Director.

Q7. Whether the retiring partner is liable in respect of the transactions taken place after his retirement?

A. No. The Retiring partner is not liable for the transactions taken place after his retirement provided he or the firm intimates to the Commissioner by a notice in writing of his retirement within one month from the date of retirement.

20 LIABILITY TO PAY TAX IN CERTAIN CASES

1 Discuss the liability to pay tax in case of an amalgamation/merger, under section 87 of the CGST Act, 2017.

Section 87 of the CGST Act, 2017 stipulates that when two or more companies are amalgamated/ merged in pursuance of an order of court or Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied/ received any goods and/or services to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

2 Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1) of the CGST Act, 2017.

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **Business is continued after his death**: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.
- **Business is discontinued after his death**: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the

deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

3 With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?

Section 90 of the CGST Act explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: 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 and 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.

4 Explain the provisions relating to liability for GST in case of company in liquidation (section 88 of the CGST Act, 2017).

The provisions relating to liability for GST in case of company in liquidation provided under section 88 of the CGST Act, 2017 are:-

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.

- The Commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- He shall communicate the details of amount to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
- When any private company is wound up and any tax, interest or penalty determined under the CGST Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.
- However, director shall not be liable if he proves to the satisfaction of the Commissioner that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

5 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.

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].

This chapter includes GST Main Book 13 Q & A
Please refer 7 Examples in GST Main Book

Chapter 21: - Offences & Penalties

ICAI's Test Your Knowledge

Q1. What are the various type of offences which may be committed by a taxable person liable to penalty?

A. There are 21 offences which may be committed by a taxable person and may be classified into following categories based upon their nature:

Offences having nexus with invoice

(i) Issue of invoice or bill without making supply;

(ii) Issuing invoice or document using GSTIN of another person;

(iii) Making a supply without invoice or with false/ incorrect invoice;

Offences having nexus with payment of tax

(iv) Not paying any amount collected as tax for a period exceeding three months;

(v) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;

(vi) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;

(vii) Non collection or lower collection of or non- payment of tax collectible at source under section 52;

(viii) Availing/utilizing input tax credit without actual receipt of goods and/or services;

(ix) Availing/distributing ITC by an Input Service Distributor in violation of Section 20;

(x) Fraudulently obtains any refund of tax;

(xi) Suppressing turnover;

Offences having nexus with Records and related information

(xii) Falsification/substitution of financial records or furnishing of fake accounts/ documents or Furnishing false information/return with intent to evade payment of tax;

(xiii) Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;

(xiv) Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the course of any proceeding;

(xv) Tampering/destroying any material evidence/documents;

(xvi) Obstructing or preventing any official in discharge of his duty;

Offences having nexus with Registration

(xvii) Failure to register despite being liable to pay tax;

(xviii) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently

Offences having nexus with Supply/Transport of goods

(xix) Transporting goods without prescribed documents;

(xx) Supplying/transporting/storing any goods liable to confiscation;

(xxi) Disposing of /tampering with goods detained/ seized/attached under the Act.

Q2. What is the quantum of penalty for an offence mentioned under section 122(1)?

A. Section 122(1) provides that any taxable person who has committed any of the 21 offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

(a) Rs. 10,000/-; or

(b) An amount equivalent to, any of the following (Applicable as the case may be) –

(i) Tax evaded; or

(ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or

(iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or

(iv) Input tax credit availed of or passed on or distributed irregularly; or

(v) Refund claimed fraudulently

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

(a) Rs. 10,000/-; or

(b) 10% of the tax due from such person

and in case of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher

Q3. Is there any penalty prescribed for a person other than the taxable person?

A. Yes, Section 122(3) provides for levy of penalty extending to Rs. 25,000/- for any person who-

- aids or abets any of the 21 offences,
- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

Q4. Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?

A. Both Mr. X and Mr. Y will be offender and will be liable to penalty as under:

Mr. X – Penalty under section 122(3) which may extend to Rs. 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely

(i) Rs. 10,000/- or (ii) 100% of tax evaded.

Q5. Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of Rs. 20,000/- is imposed by issue of SCN without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge SCN issued by department?

A. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

GST Main Book's Questions

Q1. Mr. A, an unregistered person under GST purchases the goods supplied by Mr. B who is a registered person without receiving a tax invoice from Mr. B and thus helps in tax evasion by Mr. B. What action may be taken by tax authorities to curb such type of cases and on whom?

A. Both Mr. A & Mr. B will be liable to penalty as:

Mr. A, penalty U/s 122 (3) which may extend to Rs. 25,000 (under CGST Act);

Mr. B, penalty U/s 122 (1), which will be higher of Rs. 10,000 (under CGST Act) or 100% of tax evaded.

Q2. What is the difference between the penalty under sub-section (1) and (3) of sec. 122?

A. Apart from the amount of penalty & nature of offences, U/s 122 (1) penalty is imposed on a taxable person whereas in U/s 122 (3), penalty is imposed on any person who may or may not be a taxable person.

Q3. What is the general penalty which can be levied for any violation for which no specific penalty has been prescribed?

A. Section 125 of the GST Act prescribes penalty of rupees twenty-five thousand for all those violations of provisions of the Act or any rules for which no penalty is separately provided for under the Act.

Q4. When breach of law will be considered as a minor breach and easily rectifiable mistakes?

A. As per explanation to sub-section (1) of section 126 of the GST Act, provides that a 'minor breach' shall be considered as minor breach if the amount of tax involved is less than Rs. 5,000. An omission or mistake in documentation will be considered to be 'easily rectifiable' if the same is an error apparent on record.

Q5. I am collecting tax on supply of goods & services and did not remit the same within 3 months to the Government. Does the same attract penalty? If yes, what is the amount of penalty?

A. Collection of tax and non-remittance of the same within 3 months to the Government from the due date for remittance is considered to be an offence under Section 122 (1) (iii) of the CGST Act, 2017 attracting penalty of (a) an amount equal to the tax so collected or (b) an Rs. 10,000 (whichever is higher).

Q6. Whether prosecution or other punishments could also be initiated along with confiscation or penalty?

A. In terms of section 131 confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall not prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Q7. Mr. A has collected tax on supply of exempted goods and did not remit the tax so collected to the Government account. Would Mr. A, be liable to penal and other consequences?

A. Yes, in terms of Section 122(1) (iv) of the CGST Act, 2017, collection of tax in contravention to the provisions of the CGST Act, 2017 and subsequent failure to remit the same to the credit of the Government beyond a period of 3 months from the date on which such payment becomes due is an offence attracting penalty of Rs. 10,000/- or amount equal to the amount of tax so collected, whichever is higher.

Further, in terms of Section 132(1) (d) read with Section 132(1) (l) of the CGST Act, 2017, the said offence attracts imprisonment which may extend from 1 year to 5 years based on the quantum of tax evasion.

Q8. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

A. Section 10(5) of the CGST Act provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him.

Q9. Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to Rs. 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Mangeshwar argues that it is a minor breach and therefore, no penalty is imposable.
In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.
Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.
Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.
Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches.
(CA Final Nov 2018 Old)

A. As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than Rs. 5,000. Breach made by Mangeshwar is not a 'minor breach' since the amount involved is not less than Rs. 5,000. So, penalty is imposable. Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017. Thus, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence.
As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Mangeshwar has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.
As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to Rs. 25,000. Therefore, general penalty upto Rs. 25,000 may be imposed on Mangeshwar as when no specific penalty is provided for any contravention, a general penalty may be imposed.

Q10. Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017:

i. 'X' collects Rs. 245 lakh as tax from its clients and deposits Rs. 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
ii. 'Y' collects Rs. 550 lakh as tax from its clients but deposits only Rs. 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences?
What would be the position, if 'X' and 'Y' repeat the offences?
It may be assumed that offences are proved in the court. (CA Final May 2018 New)

A.

i. As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least Rs. 100 lakh. Therefore, failure to deposit Rs. 4 lakh collected as tax by 'X' will not be punishable with imprisonment. Further, falsification of financial records by 'X' is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017 assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017.

ii. Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds Rs. 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017. Since the amount of tax evaded by 'Y' exceeds Rs. 500 lakh (Rs. 550 lakh – Rs. 30 lakh), 'Y' is liable to imprisonment upto 5 years and with fine. It has been assumed that amount of Rs. 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment vide section 132(3) of the CGST Act, 2017. Such offence is nonbailable in terms of section 132(5) of the CGST Act, 2017.

If 'X 'and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

Q11. From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

i. The goods liable for confiscation.

ii. On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST Rs. 15,00,000

Market Value of Goods Rs. 20,00,000

GST on such Goods Rs. 3,60,000

You are also required to explain relevant legal provisions in brief. (CA Final May 2018 New)

A.

i. As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, the fine leviable = Rs. 20,00,000- Rs. 3,60,000 = Rs. 16,40,000. The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).

ii. In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].

Therefore, the fine leviable = Rs. 3,60,000.

Q12. 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? (CA Final Nov 2018 Old)

A. 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.

Q13. Department initiated prosecution proceedings against a taxable person who had evaded GST of Rs. 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 Rs. 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?

(CA Final Nov 2018 Old)

A. 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. Rs. 10,000, and

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

i. 150% of tax involved or

ii. Rs. 30,000

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

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

Thus, the amount fixed by the Commissioner at Rs. 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.

21 OFFENCES & PENALITIES

1 Answer the following questions:

(a) Radhaswamy owns and supplies certain goods costing ₹ 30,00,000 in a conveyance hired from Manikaran Transporters. Market value of said goods is ₹ 40,00,000 and tax chargeable thereon is ₹ 4,80,000.

The goods supplied by Radhaswamy and the conveyance [owned by Manikaran Transporters] used for carriage of such goods are confiscated since Radhaswamy has supplied said goods in contravention of the provisions of the CGST Act, 2017 with an intent to evade payment of tax.

However, the proper officer intends to give an option to Radhaswamy and Manikaran Transporters to pay in lieu of confiscation, a fine leviable under section 130 of the CGST, Act, 2017.

Determine the maximum amount of the fine in lieu of confiscation on:

(i) the goods liable for confiscation.

(ii) the conveyance used for carriage of such goods.

(b) Raghuraman is a registered supplier in Madhya Pradesh. He failed to pay the GST amounting to ₹ 7,400 for the month of January, 20XX. The proper officer imposed a penalty on Raghuraman for failure to pay tax. Raghuraman believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. Examine the correctness of Raghuraman's claim.

(a) (i) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of first proviso to section 130(2) of the CGST Act, 2017 is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, in the given case, maximum fine leviable:

= ₹ 40,00,000 - ₹ 4,80,000 = ₹ 35,20,000

(b) In case where conveyance used for carriage of such goods is liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of third proviso to section 130(2) of the CGST Act, 2017 is equal to tax payable on the goods being transported thereon.

Therefore, in the given case, maximum fine leviable = ₹ 4,80,000

(b) No, Raghuraman's claim is not tenable in law. Section 126(1) of the CGST Act, 2017 provides that no officer shall impose any penalty under CGST Act, 2017, *inter alia,* for minor breaches of tax regulations or procedural requirements. Further, explanation to section 126(1) of the CGST Act, 2017 stipulates that a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000.

In the given case, breach made by Raghuraman is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable under the CGST Act, 2017.

2 Answer the following questions:

(i) Shagun started supply of services 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.

(i) Where the aggregate turnover of a supplier making supply of services 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.

3 Whether action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books? If yes, explain the related provisions under the CGST Act, 2017.

Yes, action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported [Section 129 of CGST Act].

Where owner comes forward: - Such goods shall be released on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods or upon furnishing of security equivalent to the said amount.In case of exempted goods, penalty is 2% of value of goods or ₹25,000/- whichever is less.

Where owner does not come forward: - Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods reduced by the tax amount paid thereon or upon furnishing of security equivalent to the said amount. In case of exempted goods, penalty is 5% of value of goods or ₹ 25,000/- whichever is lesser.

4 Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 20XX under CGST Act, 2017;

(i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.

(ii) 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the Court.

(i) As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least ₹ 100 lakh. Therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment.

Further, falsification of financial records by 'X'is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017 assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017.

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017.

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh -₹ 30 lakh), 'Y' is liable to imprisonment upto 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment vide section 132(3) of the CGST Act, 2017. Such offence is non-bailable in terms of section 132(5) of the CGST Act, 2017.

If 'X 'and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

5 From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

(i) The goods liable for confiscation.

(ii) On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market Value of Goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

(i) As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, the fine leviable = ₹ 20,00,000- ₹ 3,60,000 = ₹ 16,40,000

The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).

(ii) In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].

Therefore, the fine leviable = ₹ 3,60,000

6 From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty

Details are as follows:

Particulars	Amount (₹)
Value of goods	30,00,000
Applicable GST on such goods	5,40,000
GST already paid on such goods	3,60,000

Would your answer be different if goods were exempted from GST and value remains the same namely ₹ 30,00,000?

If owner of the goods does not come forward for payment of applicable tax and penalty, the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, is applicable GST and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon.

Therefore, in the given case, the amount payable = [₹ 5,40,000 + 50% of ₹ 30,00,000] – ₹ 3,60,000 = ₹ 16,80,000

However, in case of exempted goods, amount to be paid for release of goods detained is equal to 5% of the value of goods or ₹ 25,000, whichever is less.

= 5% of ₹ 30,00,000 or ₹ 25,000, whichever is less

= ₹ 1,50,000 or ₹ 25,000, whichever is less

= ₹ 25,000

7 XYZ carries goods from Vadodara, Gujarat to Pune, Maharashtra. The value of the goods is ₹80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention.

Calculate the penalty payable under section 129 of CGST Act, 2017:

- **If XYZ comes forward for payment of tax and penalty,**
- **If XYZ does not come forward for payment of tax and penalty.**

The penalty payable under section 129 of the CGST Act, 2017 is

(a) 100% of the tax payable on goods detained or seized where the owner of the goods comes forward for payment of tax and penalty;

(b) 50% of the value of the goods reduced by the tax amount paid thereon where the owner of the goods does not come forward for payment of tax and penalty.

By virtue of section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/ UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

Therefore, in the given case the penalty payable will be computed as under:

If XYZ[1] comes forward for payment of tax and penalty –

= ₹ 80,000 × 18% (9% CGST and 9% SGST/ UTGST) × 100%

= ₹14,400

If XYZ does not come forward for payment of tax and penalty

[1] *It has been assumed that XYZ is the owner of the goods.*

= [₹ 80,000 × 100%(50% under CGST plus 50% under SGST/ UTGST)] – [₹ 80,000 × 18%][2]

=₹ 80,000 - ₹ 14,400

= ₹ 65,600

Note: In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

8 Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to ₹ 6,100. Assessing Authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of section 126, Mangeshwar argues that it is a minor breach and therefore, no penalty is imposable.

In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore, no penalty should be levied.

Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.

Discuss what action may be taken by the Assessing Authority under law for each of the above breaches.

As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than ₹ 5,000. Therefore, breach made by Mangeshwar is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable.

[2] *It has been assumed that tax has been paid on the goods*

Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017.However, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence.

As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Mangeshwar has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.

As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to ₹ 25,000. Therefore, general penalty upto₹25,000 may be imposed on Mangeshwar.

9 What are cognizable and non-cognizable offences under section 132 of CGST Act, 2017?

As per section 132(5) of CGST Act, 2017, following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken >₹ 5 crores, namely:

(a) Supply without issuance of invoice with the intention to evade tax

(b) Issuance of any invoice/bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax

(c) Availment of ITC using invoice/bill against which no supplies have been made

(d) Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

Further, section 132(4) of CGST Act, 2017 provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences.

10 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?

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.

11 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?

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.

This chapter includes GST Main Book 32 Q & A
Please refer 3 Examples in GST Main Book

Chapter 22: - Appeals and Revision

ICAI's Test Your Knowledge

Q1. Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.

A. Yes. Any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax (subject to a maximum of Rs. 25 Crores) amount is paid as pre-deposit by the appellant.

However, no appeal can be filed against the following orders in terms of section 121: -

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
(b) an order pertaining to the seizure or retention of books of account, register and other documents; or
(c) an order sanctioning prosecution under the Act; or
(d) an order passed under section 80 (payment of tax in installments).

Q2. Describe the provisions relating to Departmental appeal to Appellate Authority under section 107 of the CGST Act.

A. Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

Q3. Specify the amount of mandatory pre-deposit which should be made along with every appeal before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?

A. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to 10% of the remaining amount of tax in dispute subject to a maximum of Rs. 25 crores, arising from the impugned order.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; &

(b) 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the Appellate Authority, arising from the said order subject to a maximum of Rs. 50 crores, in relation to which appeal has been filed.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

Q4. With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

A. Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108. Section 108 of the Act authorizes such "revisional authority" to call for & examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue & is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the noticee. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order if-

(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken up for revision under this section at any earlier stage.

(d) the order is a revisional order

Q5. The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

A. The statement is partially correct. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order,

does not exceed Rs, 50,000.

GST Main Book's Questions

Q1. What is the time limit for filing appeal to the Appellate authority by a person aggrieved by any decision or order passed by an adjudicating authority? Whether this time limit can be extended?

A. A person aggrieved by any decision or order passed by an adjudicating authority may file an appeal to the Appellate Authority within 3 months from the date of communication of decision/order of adjudicating authority. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

Q2. Section 113 (3) of the CGST Act, 2017 provides that the Appellate Tribunal, may at any time within 3 months of the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. What would constitute "mistake apparent from record" for the purpose of this provision?

A. Failure to make into consideration the material evidence, which is present on record, would amount to a "mistake apparent on the face of the record". [CCEx V. Bharat Bijlee Ltd. 2006 (SC)]

When a decision rendered by the Apex Court is not considered, non-consideration of such binding precedent constitutes an error apparent on the face of the record. The binding decision of the Apex Court would cover even the period prior to the inception of such law during which the orders contrary to such ratio of the subsequent decision were passed [HLL V. CCEx, 2006 (Tri. LB)]

Other mistakes apparent on the face of the record, which can be rectified by the Tribunal in terms of section 113 (3), can be typographical error, calculation mistakes, point raised in appeal but not considered, retrospective amendments in the statute, etc.

Q3. An assessee moved an application on 15th December 2018 under section 113 (3) for rectification of mistake in order passed on 30th September 2018. The Tribunal took up the application on 15th May 2019 and dismissed the same on the ground that the Tribunal cannot entertain an application for rectification beyond a period of 3 months. Is this correct?

A. Section 113 (3) states that the Appellate Tribunal may at any time within 3 months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Since, in the present case, the application has been made within 3 months from the date of the order, it is not relevant for the purpose of limitation as to when the Tribunal takes up the same for hearing and disposal. Therefore, in this case, the Tribunal cannot reject the application for rectification of mistake on the ground of limitation if application is made with in time limit.

Q4. Discuss with the help of decided case, whether the re-appreciation of evidence on a debatable point by the GST Appellate Tribunal can be considered as rectification of mistake apparent on record U/s 113 (3)?

A. No, re-appreciation of evidence by GST Appellate Tribunal on a debatable point cannot be considered to be rectification of mistake apparent on record U/s 113 (3) of the CGST Act, 2017.

Supreme Court, in case of CCE V RDE Concrete India Pvt. Ltd. [2011] observed that a mistake apparent on record must be an obvious and patent mistake. It need not be established by a long-drawn process of reasoning. Arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

The Supreme Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the court opined that in pursuance of a rectification application, CESTAT cannot reappreciate the evidence and reconsider its legal view taken earlier.

Q5. Can department file appeal in respect of same assessee, if in respect of some years, no appeal was filed involving identical dispute?

A. It was held in C.K. Gangadharan V. CIT [2008] (SC) that if the revenue has not filed an appeal against any order/judgement in one case, it would not be allowed to file an appeal in another case when the same issue is involved due to the reasons that it cannot pick and choose and certainty in law should be ensured.

However, the revenue can file an appeal in another case involving same/similar issue –

- Where there is just cause in doing so i.e. where appeal was not preferred earlier in view of small amount involved; or
- Where it is in public interest to do so; or
- For a pronouncement by higher court when divergent views are expressed by Tribunals/High Courts.

Section 120 provides that the Board may issue orders or instructions or directions fixing monetary limits for the purposes of regulating the filing of appeal, etc. by the Department. If Department has not filed an appeal, etc. as per circular fixing monetary limits, the Department may file any appeal, application or revision in any other case involving the same or similar issues or questions of law and the assessee cannot contend that the Department has accepted the decision on the disputed issue by not filing the appeal.

Q6. Where Commissioner of CGST feels that the order passed is not legal or proper, whether he can revise the order on his own?

A. The Commissioner cannot revise the order U/s 107. For CGST, as per Sec. 107 (2), if the commissioner finds an order or decision (passed by an adjudication authority) to be not legal or proper, he can pass an order setting out the points for determination where he is of the view that the order is not legal and proper and directing a GST officer sub-ordinate to him to file an application to appellate authority. Such application is then treated by the appellate authority as if it were an appeal.

Q7. Does the AA have the power to remand the case back to the adjudicating authority for whatever reasons?

A. No. Section 107(11) specifically states that the AA shall, after making such inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall not refer the case back to the authority that passed the decision or order.

Q8. When the Tribunal is having powers to refuse to admit the appeal?

A. In cases where the appeal involves –

- tax amount or input tax credit or
- the difference in tax or the difference in input tax credit involved or
- amount of fine, fees or amount of penalty determined by such order,

does not exceed Rs 50,000/-, the Tribunal has discretion to refuse to admit such appeal. (Section 112(2))

Q9. Whether interest becomes payable on refund of pre-deposit amount?

A. Yes. As per Section 115 of the Act, where an amount deposited by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 56 not exceeding 9% shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Q10. Compute the quantum of pre-deposit required to be made on U/s 107 of the CGST Act 2017 in each of the following independent case:

(a) In an order Dated 18-10-2018 issued to ABC Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000. ABC Ltd. has admitted Rs. 5,00,000 as tax liability and intends to file an appeal with the Commissioner (Appeals) against tax demand of Rs. 45,00,000.

(b) In an order Dated 18-10-2018 issued to XYZ Ltd., the Joint Commissioner of central tax has confirmed a tax demand of Rs. 50,00,000 and imposed a penalty of Rs. 5,00,000. XYZ Ltd. intends to file an appeal with the Commissioner (Appeals) against the said order.

A.

(a) Section 107 (6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. Thus, ABC Ltd. has to pre-deposit Rs. 5,00,000 (admitted tax) and 10% of Rs. 45,00,000 (tax in dispute) = Rs. 9,50,000.

(b) Section 107 (6) of the CGST Act 2017, require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. In this case since entire amount of tax demanded is in dispute, hence XYZ Ltd. has to pre-deposit 10% of Rs. 50,00,000 = Rs. 5,00,000.

Q11. Whether other party could file cross objections against the appeal preferred by the assessee or by the department?

A. On receipt of notice that an appeal has been preferred under section 112, other party against whom an appeal is preferred, could file a cross objection to the appeal even though he has not preferred an appeal. A Memorandum of Cross-Objections have to be filed within 45 days from the date of receipt of the notice of appeal in FORM GST APL-06. The Tribunal shall dispose of the cross objections as if it is an appeal.

Q12. Whether appeal / application / cross objections filed beyond the time limit would be entertained?

A. Tribunal has been conferred with powers to condone the delay upto 3 months, beyond the period of 3 months or 6 months in case of filing of appeals, where sufficient cause for the delay is shown. Similarly, delay upto 45 days could be condoned by the Tribunal in filing the memorandum of cross objections where sufficient cause for the delay is shown.

Q13. Whether interest becomes payable on refund of pre-deposit amount?

A. Yes. As per sec 115 of the Act, where an amount deposited by the appellant under section 107(6) or under section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be. Interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Q14. Whether the Tribunal has power to rectify / amend the orders passed by it?

A. Yes, the Tribunal may amend any order passed by it under in terms of Section 113(1) so as to rectify any mistake apparent from the record. The Hon'ble Tribunal could undertake rectification on its own or on application by either of the parties to the appeal (by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal). The application for rectification shall be made within a period of three months from the date of the Order sought to be rectified.

However, no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under section 113(3), unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

Q15. What are the orders against which appeal could be preferred before the Supreme Court?

A. Following orders could be challenged before the Supreme Court:

a) Order passed by the National Bench or Regional Benches of the Appellate Tribunal; or (no appeal in High Court)

b) Judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

Q16. Who is an Appellate Authority?

A. "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107. Section 107 provides that appeal shall be preferred before such Appellate Authority as may be prescribed. Rule 109A provides that for the purpose of appeal, an Appellate Authority shall be:

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) Any officer not the below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

Q17. Under what circumstances Commissioner could direct the Officer to prefer an appeal against the order of the adjudicating authority?

A. The Commissioner may, on his own motion, or upon request from the Commissioner of State tax Commissioner of Union Territory tax, call for and examine the records of any proceeding in which an adjudicating authority has passed any decision or order under the CGST Act or the SGST Act or the UTGST Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order. The Commissioner may by an order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Q18. What type of order could the Appellate Authority pass? Whether Appellate Authority could refer the case back to Adjudicating Authority?

A. The Appellate Authority may pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. The order shall be in writing giving details as to determination. The Appellate Authority shall, along with its order under section 107(11), issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed. However, the Appellate Authority does not have power to refer the case back to the Adjudicating Authority that passed the said decision or order.

Q19. Whether Order of the Appellate Authority could also be stayed by Revisional Authority?

A. The Order which has been subject to an appeal before the Appellate Authority (section 107) as well as orders of the Appellate Authority which are appealed before the Tribunal cannot be stayed by the Revisional Authority. However, the Revisional Authority could pass an order under revisionary power on any point which has not been raised and decided in an appeal before Appellate Authority. Such, revision order could be passed within 1 year from the date of the order of the Appellate Authority or 3 years from the date of the original order, whichever is later.

Q20. When a Revisional Authority cannot exercise its powers?

A. Revisional authority shall not exercise its powers, in case of following:

(a) When the order has been subject to an appeal before the adjudicating authority (under section 107) or the Tribunal (under section 112) or the High Court (under section 117) or the Supreme Court (under section 118); or

(b) If the period of 6 months as specified under 107(2) for preferring an appeal by department before Appellate Authority has not yet expired or where more than three years have expired after the passing of the decision or order sought to be revised; or

(c) where the order has already been taken for revision under section 108 at any earlier stage; or

(d) revisionary order passed under section 108(1).

Q21. What is the Constitution of National Appellate Tribunal and how the same is constituted? Where the National Bench and Regional Bench shall be located?

A. The Central Government shall on the recommendation of the GST Council by Notification constitute Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal) for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.
National bench shall be located at New Delhi. The Central Government on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required.

Q22. What is the composition of National Bench and Regional Benches?
A. National Bench shall be headed by the National president along with one Technical member (Centre) and one Technical Member (State). Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

Q23. What is jurisdiction of National or Regional Benches of the Appellate Tribunal?
A. National or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

Q24. What is State Bench or Area Bench?
A. The Government, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal, for exercising the powers of the Appellate Tribunal within the concerned State or Union territory. Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council.

Q25. What is jurisdiction of State Bench or Area Bench?
A. State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in all cases other than those involving matters where one of the issues involved relates to the place of supply.

Q26. What is the composition of State Bench and Area Benches?
A. Each State Bench and Area Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

Q27. Whether any matter could be heard by bench consisting of members less than 3 as set out above?
A. Yes, in the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members. Further, where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed Rs. 5 Lakhs and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

Q28. What would be consequence where there is a difference of opinion on any issue among the members of the bench?
A. If the Members of the Bench (National/Regional/State/Area) differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the

case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

Q29. Can the Tribunal reject to entertain an appeal based on the monetary limits?

A. Yes. The Tribunal has been conferred with discretion to refuse to admit an appeal where:

- the tax or input tax credit involved or
- the difference in tax or input tax credit involved or
- the amount of fine, fee or penalty determined by such order,

does not exceed Rs. 50,000/-

Q30. Which are the matters on which the appeal against order of the Tribunal could be preferred before the High Court?

A. Appeal shall lie to the High Court against an Order passed by the State Bench or Area Benches of the Tribunal.

Q31. Whether all decisions and orders can be appealed?

A. No. in terms of Section 121, orders listed below cannot be appeal against:

(a) An order of the Commissioner or other competent authority for transfer of proceeding from one officer to another officer; or

(b) An order pertaining to the seizure or retention of books of account, register and other documents; or

(c) An order sanctioning prosecution under this Act; or

(d) An order passed under section 80 relating to payment of tax, interest and other dues in installments.

Q32. XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2017 under section 73 of the CGST Act, 2017 wherein it was decided as follows:

CGST and SGST due (Total) Rs. 6,00,000

Interest @ 18% p.a. for number of delayed days

Penalty Rs. 60,000

The assessee filed an appeal before the Appellate Authority on 26-11- 2017.

Case I How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

Case II Whether your answer would be different if the assessee appeals only against part of the demanded amount say Rs. 4,00,000 and admits the balance liability of tax amounting to Rs. 2,00,000 arising from the said order. (CA Final May 2018 New)

A. Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:-

(a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and

(b) 10% of remaining tax in dispute arising from the impugned order.

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of Rs. 6,00,000, which is Rs. 60,000 assuming that XY Company disagrees with the entire tax demanded.

However, in Case-II, since XY Company admits the tax liability of Rs. 2,00,000 and disputes the tax demanded of only Rs. 4,00,000, it has to make a pre-deposit of:

(i) Rs. 2,00,000 + Rs. 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and

(ii) 10% of Rs. 4,00,000 which is Rs. 40,000.

22 APPEALS AND REVISION

1 In an order dated 20.08.20XX issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed a CGST demand of ₹ 280 crore. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal?

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 25 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 25 crore.

In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

(i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore]

or

(ii) ₹ 25 crore,

whichever is less.

= ₹ 25 crore.

Further, section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 50 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

(i) ₹ 56 crores [20% of the amount of tax in dispute, viz.280 crores]

or

(ii) ₹ 50 crores,

whichever is less.

= ₹ 50 crores.

2 With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed.

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:—

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the CGST Act, 2017; or

(d) an order passed under section 80 of the CGST Act, 2017 (payment of tax in instalments).

3 With reference to section 108 of the CGST Act, 2017, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Section 2(99) of the CGST Act, 2017 defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders as referred to insection 108 of the CGST Act, 2017.

Section 108 of the CGST Act, 2017 authorizes such "Revisional Authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the noticee. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order if-

(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken up for revision under this section at any earlier stage.

(d) the order is a revisional order.

4 Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal 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.

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.

5 Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20.08.20XX (received by Home Furnishers on 22.08.20XX) confirming a tax demand of ₹ 50,00,000 and imposing a penalty of equal amount under section 122 of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

(1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?

(2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?

(3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.

(1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file the appeal to Appellate

Authority on or before 22.11.20XX. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

(2) GST law makes provisions for cross empowerment between CGST and SGST/ UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/ UTGST component of the same transaction.

The law further provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officers of that Act only (CGST Act). Similarly, if any order is passed by the proper officer of SGST, any appeal/ review/ revision/ rectification will lie with the proper officer of SGST only. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

(3) Home Furnishers' view is not correct in law. Section 107(6) of the CGST Act provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of twenty-five crore rupees.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of ₹50,00,000 which is ₹5,00,000.

6 With reference to the provisions of section 120 of the CGST Act, 2017, list the cases in which appeal is not to be filed.

(1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

(2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).

(4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

7 XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-20XX under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars	
CGST and SGST due (Total)	**₹ 6,00,000**
Interest	**@ 18% p.a. for number of delayed days**
Penalty	**₹60,000**

The assessee filed an appeal before the Appellate Authority on 26-11-20XX.

Case I

How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

Case II

Whether your answer would be different if the assessee appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 arising from the said order.

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:-

(a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and

(b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 assuming that XY Company disagrees with the entire tax demanded.

However, in Case-II, since XY Company admits the tax liability of ₹ 2,00,000 and disputes the tax demanded of only ₹4,00,000, it has to make a pre-deposit of:

(i) ₹2,00,000 +₹20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and

(ii) 10% of ₹4,00,000 which is ₹40,000.

8 Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness?

Exceptional circumstances specified in rule 112 of the CGST Rules, 2017 where the production of additional evidence will be allowed are as follows:

(a) where the adjudicating authority/ appellate authority (AA) has refused to admit evidence which ought to have been admitted.

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/ AA.

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority/ AA any evidence which is relevant to any ground of appeal; or

(d) where adjudicating authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Yes, the AA or the Tribunal can direct the production of any document or examination of any witness to enable it to dispose of the appeal.

9 Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017.

As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:

(i) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(ii) an order pertaining to the seizure or retention of books of account, register and other documents; or

(iii) an order sanctioning prosecution under CGST Act; or

(iv) an order passed under section 80 of the CGST Act (payment of tax in instalments).

10 Explain briefly the provisions regarding mandatory pre-deposit to be made before filing an appeal before Appellate Authority and Tribunal as per CGST Act, 2017.

As per section 107(6) of the CGST Act, 2017, no appeal shall be filed before Appellate Authority, unless the appellant pays:-

(a) in full tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and

(b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of twenty five crore rupees.

Section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed before Tribunal, unless the appellant pays:-

(a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him, and

(b) 20% of the remaining tax in dispute [in addition to amount deposited before Appellate Authority] arising from the order appealed against subject to a maximum of fifty crore rupees[1].

On making the pre-deposit as above, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

[1]Amended as per CGST (Amendment) Act 2018, w.e.f. 1st day of Feb, 2019 vide NN-2/ 2019–CT, dated. 29th Jan, 2019.

This chapter includes GST Main Book 7 Q & A
Please refer 1 Example in GST Main Book

Chapter 23: - Advance Ruling

ICAI's Test Your Knowledge

Q1. Which are the matters enumerated in Section 97 for which advance ruling can be sought? What are the matters on which Advance Ruling cannot be sought?

A. The Advance Ruling can be obtained on the following matters:

(a) classification of any goods or services or both;
(b) applicability of a notification issued under provisions of the Act;
(c) determination of time and value of the supply of goods or services or both;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Advance Ruling cannot be sought on any matters other than those specified above (No advance ruling can be sought for Place of Supply matters). Additionally, if the matter on which advance ruling is sought is already pending or decided in any proceedings in the applicant's case under any of the provisions of the Act, then the AAR shall not admit such application.

Q2. What is the objective of having a mechanism of Advance Ruling?

A. The broad objectives for setting up a mechanism of Advance Ruling are:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI)
- reduce litigation
- pronounce ruling expeditiously in a transparent and inexpensive manner

Q3. To whom will the Advance Ruling be applicable?

A. As per Section 103, an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means 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.

Q4. What is the time period for applicability of Advance Ruling?

A. As per Section 103, the law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

Q5. Can an advance ruling given be nullified?

A. Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.

If the Authorities (AAR and Appellate Authority) find that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.

Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).

An order declaring advance ruling to be void can be passed only after hearing the applicant/ appellant.

A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

Example: ABC Ltd. sought an advance ruling regarding the taxability of “Kumkum” manufactured by them & used for pooja & other religious purposes as claimed by them. The authority ruled in favour of ABC Ltd. and exempted their product “Kumkum” from the levy of GST as a pooja material. Later, it brought into the notice of the Authority that the said product is actually used as a colorant in the cloth industry as a dying agent. After giving opportunity, the authority can now pass an order U/s 104, declaring the advance ruling as void ab initio.

GST Main Book’s Questions

Q1. What is the objective of having a mechanism of Advance Ruling?

A. The broad objective for setting up such an authority is to:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI);
- reduce litigation;
- pronounce ruling expeditiously in transparent and inexpensive manner.

Q2. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

A. The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus, no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, writ petition may lie before Hon’ble High Court or the Supreme Court.

Q3. Can advance ruling be applied for after supply of goods and/or services?

A. Yes, as per section 95 (a) of the Act, application can be made for advance ruling in relation to the supply of goods and/or services, being undertaken by applicant.

Q4. When AAR shall not admit the application for advance ruling?

A. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Q5. Are the tax authorities bound by the advance ruling?

A. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.

Q6. What are the powers vested with the authority and the appellate authority?

A. The authority or the appellate authority shall have all the powers of a civil court to exercise the following powers:

(i) discovery and inspection;
(ii) enforcing attendance of any person and examining him on oath;
(iii) issuing commissions and compelling production of books of account and other records.

Q7. Can the Ruling issued by the AAR or order passed by the AAAR be rectified?

A. In case there is any error apparent on the face of the records, the AAR or AAAR as the case may be, can amend the original order passed by it, if such error is noticed by the AAAR or AAAR on its own record or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant, within a period of 6 months from the date of said order. However, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Example: In case AAR or AAAR has decided the advance ruling and issued the order on 31st July 2018 and later on 28th September 2018, it has been noticed by the authority itself (or any concerned officer or any jurisdictional officer or applicant) that there is some mistake apparent on record then the authority may rectify such order. The tax rate decided in earlier order was taken as 18% instead of 28%, then before rectifying such order the Authority shall provide the opportunity of hearing to the applicant.

23 ADVANCE RULING

1 **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?

(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 CBIC in its e-flier issued on the subject of advance ruling. The e-flier is available on the CBIC'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 date on which the ruling sought to be appealed against is communicated. 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.

2 Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98 of CGST Act, 2017.

The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 of the CGST Act, 2017 is as under:-

1. Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.

2. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.

3. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

4. If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.

5. If the application is admitted, the AAR shall pronounce its ruling on the question specified in the application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

6. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.

7. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue

8. The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

9. A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

3 Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101 of the CGST Act, 2017.

Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

4 Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.

As per section 97(2) of CGST Act, 2017, advance ruling can be sought for the following questions:-

(a) classification of any goods or services or both

(b) applicability of a notification issued under the CGST Act

(c) determination of time and value of supply of goods or services or both

(d) admissibility of input tax credit of tax paid or deemed to have been paid

(e) determination of the liability to pay tax on any goods or services or both

(f) whether applicant is required to be registered

(g) whether any particular activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.

Chapter 24: - Miscellaneous Provisions

ICAI's Test Your Knowledge

Q1. How shall the GST compliance rating score be determined?

A. As per section 149(2), the GST compliance rating score shall be determined on a scale of ten on the basis of prescribed parameters.

Q2. When shall the power to collect statistics be exercised under GST laws?

A. As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.

Q3. When shall the particulars relating to any proceedings or prosecution be published under GST laws?

A. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

Q4. Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

A. Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

Q5. What is Anti-profiteering measure?

A. As per section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. National Anti-profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

GST Main Book's Questions

Q1. Is there any condition that consideration must be received in foreign currency for deemed export goods?
A. There is no condition that consideration for goods notified as deemed exports must be received in convertible foreign exchange. The consideration may be received in Indian Rupees also.

Q2. Whether imported goods, supplied 'as such' qualify for deemed exports?
A. Only goods manufactured in India, which are notified by Central Government qualify to be treated as deemed exports. Thus goods notified u/s 147, if imported do not qualify as deemed exports, if they are supplied 'as such'.

Q3. Whether goods notified u/s 147, if manufactured in India from imported goods qualify for the benefit of deemed exports?
A. Provisions of Section 147 apply to 'goods manufactured in India'. There is no restriction that raw materials required for manufacture of notified goods must also be manufactured in India. Hence notified goods, if manufactured from imported goods would qualify as deemed exports.

Q4. Who can rectify a mistake apparent on record U/s 161?
A. Any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document.

24 MISCELLANEOUS

1 Elaborate the duties of Anti-profiteering Authority.

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 10^{th} of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

2 Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

25 COMPUTATION OF GST LIABILITY

1 **Allfit Laboratories Ltd. is a registered supplier of bulk drugs in Delhi paying tax under regular scheme. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi. For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are effected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.**

Allfit Laboratories Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratory located in Delhi.

The company has furnished the following information for the month of January, 20XX:

Particulars	₹
Advance received towards drug development services to be provided to Orochem Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 20XX and invoice is issued on 28.02.20XX]	5,00,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 20XX]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000

Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under LUT [Consideration received in convertible foreign exchange]	**90,00,000**
Drug development services provided to Unipharma Ltd., a drug manufacturer, located in Delhi	**6,00,000**

You are required to determine the GST liability [CGST & SGST or IGST, as the case may be] of Allfit Laboratories Ltd. for the month of January, 20XX with the help of the following additional information furnished by it for the said period:

1. Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos – agents of Allfit Laboratories Ltd. in Punjab and Haryana respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs under their invoices to the Medical Stores located in their respective States for Rs. 60,00,000 and Rs. 50,00,000 respectively.

2. Bulk drugs have been supplied to Ronn Medicos - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of Rs. 15,00,000. Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulk drugs supplied to Ronn Medicos Pvt. Ltd. is Rs. 30,00,000. Further, Ronn Medicos Pvt. Ltd. is not eligible for full input tax credit.

Note:

(i) All the given amounts are exclusive of GST, wherever applicable.

(ii) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Bulk drugs	2.5%	2.5%	5%
Drug development services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary.

Computation of GST Liability of Allfit Laboratories Ltd. for the month of January, 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Advance received for drug development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [Note - 1]	45,000 [5,00,000 × 9%]	45,000 [5,00,000 × 9%]	
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Note - 2]			Nil
Supply of bulk drugs to wholesale dealers of drugs in Delhi [Note - 3]	1,50,000 [60,00,000 × 2.5%]	1,50,000 [60,00,000 × 2.5%]	
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under LUT [Note - 4]			Nil
Supply of drug development services to Uni pharma Ltd., a drug manufacturer, located in Delhi [Note - 5]	54,000 [6,00,000 × 9%]	54,000 [6,00,000× 9%]	
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [Note - 6]			4,95,000 [99,00,000 × 5%]
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [Note - 7]			1,50,000 [30,00,000 × 5%]
Total GST liability	**2,49,000**	**2,49,000**	**6,45,000**

Notes:

1. Being an intra-State supply of services, supply of drug development services to Orochem Ltd. of Delhi is subject to CGST and SGST @ 9% each. Further, in terms of section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January, 20XX.

2. Being an inter-State supply of goods, supply of bulk drugs to Novick Pharmaceuticals of Gurgaon, Haryana is subject to IGST @ 5%. Further, in terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment.

   However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that time of supply of goods for the purpose of payment of tax is the date of issue of invoice/last date of issue of invoice.

   Thus, GST is not payable at the time of receipt of advance against supply of goods. The time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceuticals is the time of issue of invoice, which is in March, 20XX. Thus, said advance will be taxed in March, 20XX and not in January, 20XX.

3. Being an intra-State supply of goods, supply of bulk drugs to wholesale dealers of drugs in Delhi is subject to CGST and SGST @ 2.5 % each.

4. Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the bulk drugs to Anchor Pharmaceuticals Inc. of USA under LUT is export of goods.

   Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of IGST Act].

5. Being an intra-State supply of services, supply of drug development services to Unipharma Ltd. of Delhi is subject to CGST and SGST @ 9% each.

6. Value of supply of goods made through an agent is determined as per rule 29 of the CGST Rules. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

   In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal PharmaPvt. Ltd. and Rochester Medicos – will be 99,00,000 [90% of (60,00,000 + 50,00,000)]. Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.

7. If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to section 15 of the CGST Act]. In the given case, since Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos, both are related persons.

   Value of supply of goods between related persons (other than through an agent) is determined as per rule 28 of the CGST Rules. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the invoice value. Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Thus, open market value of the bulk drugs supplied to Ronn Medicos, i.e. 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.

2 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.

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 section 7 read with 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 of services are in two different States [Section 7(3)(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(2) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

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.

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) Excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on annual maintenance service for excavators shall be allowed in terms of section 17(5)(ab). Further, 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)(i) of the CGST Act, 2017 allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the given case, it is assumed that it is not obligatory for employer to provide health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

4 V-Supply Pvt. Ltd. is a registered manufacturer of auto parts in Kolkata, West Bengal. The company has a manufacturing facility registered under Factories Act, 1948 in Kolkata. It procures its inputs indigenously from both registered and unregistered suppliers located within as well as outside West Bengal as also imports some raw material from China.

The company reports the following details for the month of November, 20XX:

Payments	₹ (in lakh)	Receipts	₹ (in lakh)
Raw material	3.5	Sales	15
Consumables	1.25		
Transportation charges for bringing the raw material to factory	0.70		
Salary paid to employees on rolls	5.0		
Premium paid on life insurance policies taken for specified employees	1.60		
Audit fee	0.50		
Telephone expenses	0.30		
Bank charges	0.10		

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it:

(i) Raw material amounting to ₹ 0.80 lakh is procured from Bihar and ₹ 1.5 lakh is imported from China. Basic customs duty of ₹ 0.15 lakh, education cesses of ₹ 0.0045 lakh and integrated tax of ₹ 0.29781 lakh are paid on the imported raw material. Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth ₹ 0.30 lakh is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers. Further, raw material worth ₹ 0.05 lakh purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.

(ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ` 0.25 lakh for running the generator in the factory.

(iii) Transportation charges comprise of ` 0.60 lakh paid to Goods Transport Agency (GTA) in Kolkata and ` 0.10 lakh paid to horse pulled carts. GST applicable on the services of GTA is 5%.

(iv) Life insurance policies for specified employees have been taken by the company to fulfill a statutory obligation in this regard.. The life insurance service provider is registered in West Bengal.

(v) Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.

(vi) Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.

(vii) Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.

(viii) The breakup of sales is as under:

Sales in West Bengal – ₹ 7 lakh

Sales in States other than West Bengal – ₹ 3 lakh

Export under LUT – ₹ 5 lakh

The balance of input tax credit with the company as on 1.11.20XX is:

CGST - ₹ 0.15 lakh

SGST - ₹ 0.08 lakh

IGST - ₹ 0.09 lakh

Compute eligible input tax credit and net GST payable [CGST, SGST or IGST, as the case may be] by V-Supply Pvt. Ltd. for the month of November 20XX.

Note-

(i) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

(ii) The necessary conditions for availing input tax credit have been complied with by V-Supply Pvt. Ltd., wherever applicable.

You are required to make suitable assumptions, wherever necessary.

Computation of input tax credit available with V-Supply Pvt. Ltd. in the month of November 20XX

S. No.	Particulars	Eligible input tax credit			
		CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
1.	Raw Material				
	Raw material purchased from Bihar [Refer Note 1(i)]			14,400	14,400

	Raw material imported from China [Refer Note 1(ii)]			29,781	29,781
	Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1(iii)]	Nil	Nil		Nil
	Raw material destroyed due to seepage [Refer Note 1(iv)]	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [Refer Note 1(i)] [Rs. 3.5 - Rs.1.5 – Rs.0.80 – Rs. 0.30 – Rs.0.05] = Rs. 0.85]	7,650	7,650		15,300
	Total	7,650	7,650	44,181	59,481
2.	Consumables [Refer Note 2]	9,000	9,000		18,000
3.	Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
4.	Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800
6.	Audit fee [Refer Note 6]	4,500	4,500	-	9,000

7.	Telephone expenses [Refer Note 6]	2,700	2,700		5,400
8.	Bank charges [Refer Note 6]	900	900		1,800
		40,650	**40,650**	**44,181**	**1,25,481**

Computation of net GST payable

Particulars	**CGST* ₹**	**SGST* ₹**	**IGST* ₹**	**Total ₹**
On Intra-state sales in West Bengal	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal			54,000	54,000
On exports under LUT [Note 7]	Nil	Nil	Nil	Nil
On inward supply of GTA services under reverse charge [Note 3]	1,500	1,500		3,000
Total output tax liability	64,500	64,500	54,000	1,83,000
Less: Cash paid towards tax payable under reverse charge [Note 10]	(1,500)	(1,500)		(3,000)
Less: Input tax credit [Note 8]				
Opening balance of input tax credit on 01.11.20XX	(15,000)	(8,000)	(9,000)	(33,000)
Input tax credit availed during the month	(40,650)	(40,650)	(44,181)	(1,25,481)
Net GST payable	**7,350**	**14,350**	**819**	**22,519**

Notes:

(1) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.

(ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a) of the CGST Act. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.

(iii) Tax on intra-State procurements made by a registered person from an unregistered supplier shall be leviable only on notified categories of goods and services. [Section 9(4) as amended vide CGST (Amendment) Act 2018].

(iv) Input tax credit is not available on destroyed inputs in terms of section 17(5)(h) of the CGST Act.

2. Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1) of the CGST Act. However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2) of the CGST Act]. Hence, there being no levy of GST on diesel, there cannot be any input tax credit of the same.

3. In respect of intra-State road transportation of goods undertaken by a GTA, who has not paid CGST @ 6%, for any person registered under the GST law, CGST is payable under reverse charge by the recipient of service. The person who pays or is liable to pay freight for the transportation of goods is treated as the person who receives the service*[Notification No. 13/2017 CT (R) dated 28.06.2017]*. Thus, V-Supply Pvt. Ltd. will pay GST under reverse charge on transportation service received from GTA.

Further, tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of section 2(62)of the CGST Act. Thus, input tax paid under reverse charge on GTA service will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in course or furtherance of business.

Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services

5. Input tax credit on supply of life insurance service is not blocked if it is obligatory for an employer to provide such service to its employees under any law for the time being in force. [Proviso to section 17(5)(b) of the CGST Act]. Therefore, GST paid on premium for life insurance policies will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in the course or furtherance of business.

6. Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1) of the CGST Act.

7. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].

8. Since export of goods is a zero rated supply, there will be no apportionment of input tax credit and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].

9. As per section 49(5) of the CGST Act read with rule 88A, input tax credit of-

   (i) IGST is utilised towards payment of IGST first and then CGST and SGST in anyorder.

   (ii) CGST is utilised towards payment of CGST and IGST in that order.

   (iii) SGST is utilised towards payment of SGST and IGST in that order

10. Section 49(4) of the CGST Act lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

11. CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

5 Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 20XX:

S. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000
(ii)	Commission received as an insurance agent from insurance company.	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

He received the services from unregistered goods transport agency for his business activities and paid freight of ₹ 45,000 (his aggregate turnover of previous year was ₹ 9,90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Nagarjun for the month of September, 20XX. Working notes should form part of your answer.

Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000
Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	45,000
Value of taxable supply on which GST is to be paid	**1,38,000**

Notes:

(1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*. Thus, service provided as selector of team is liable to GST.

(2) Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of

Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.

(3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*. Thus, such services provided in respect of urban area branch will be taxable.

(4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*, services provided to such mission are taxable.

(5) Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.

(6) GST on services provided by a GTA (not paying tax @ 12%) to *inter alia* a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of *Notification No. 13/2017 CT(R) dated 28.06.2017*. The turnover of previous year is irrelevant in this case.

6 ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 20XX.

Details of GST paid on inward supplies during the month:

Items	GST paid (₹)
Health insurance of factory employees as required by Factory Act	20,000
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.	18,000
Work contractor’s service used for installation of plant and machinery.	12,000

Purchase of manufacturing machine directly sent to job worker's premises under challan.	**50,000**
Purchase of car used by director for the business meetings only.	**25,000**
Outdoor catering service availed for business meetings.	**8,000**

ABC Company Ltd. also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Receipts on outward supply (exclusive of GST) for the month of November, 2019 are as follows:

Items	***Outward Supply (₹)***
Hiring receipts for machine	***5,25,000***
Service charges for supply of man power operators	***2,35,000***

Assume all the transactions are inter State and the rates of IGST to be as under:

(i) Sale of machine 5%

(ii) Service of hiring of machine 12%

(iii) Supply of man power operator service 18%

Compute the amount of input tax credit available and also the net GST payable for the month of November 20XX by giving necessary explanations for treatment of various items.

Note: Opening balance of input tax credit is Nil.

Computation of net GST payable by ABC Company Ltd.

Particulars	**GST payable (₹)**
Gross GST liability [Refer working note (2) below]	91,200

Less: Input tax credit [Refer working note (1) below]	82,000
Net GST liability	**9,200**

Working Notes:

(1) Computation of Input Tax Credit (ITC) available with ABC Company Ltd. in the month of November 2017

Particulars	**GST (₹)**
Health insurance of factory employees [Note – 1]	20,000
Raw material received in factory [Note – 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	**82,000**

Notes:

1. ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) of the CGST Act, 2017 since it is obligatory for employer to provide health insurance to its employees under Factory Act -.

2. Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in December, 20XX.

3. Section 17(5)(c) of CGST Act, 2017 provides that ITC on works contract services is blocked when supplied for construction

of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.

Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.

4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) of CGST Act, 2017 read with rule 45(1) of CGST Rules, 2017.

5. Section 17(5)(a) of CGST Act, 2017 provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making taxable supply of-

(i) further supply of such vehicles,

(ii) transportation of passengers,

(iii) imparting training on driving, flying, navigating such vehicles and

Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of goods or any other use as specified, ITC thereon will not be available.

6. Section 17(5)(b)(i) of CGST Act, 2017 provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

(2) Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000

Service charges for supply of manpower operators	2,35,000	12%	28,200
		Gross GST liability	**91,200**

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the CGST Act, 2017.

7 Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for the month of April, 20XX:

Particulars		₹
Receipts **Details of Supplies**		
(i)	Supplies in Rajasthan	8,75,000
(ii)	Supplies in States other than Rajasthan	3,75,000
(iii)	Export under LUT	6,25,000
Payments		
Raw materials		
(i)	Purchased from registered suppliers located in Rajasthan	1,06,250
(ii)	Purchased from unregistered suppliers located in Rajasthan	37,500
(iii)	Purchased from Punjab from registered supplier	1,00,000

(iv)	Integrated tax paid on import from USA	22,732
	Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and Vat paid) worth ` 31,250 for running the machinery in the factory	1,56,250
	Monthly rent for the factory building to the owner in Rajasthan	1,00,000
	Salary paid to employees on rolls	6,25,000
	Premium paid on life insurance policies taken for specified employees. Life insurance policies for specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard.. The life insurance service provider is registered in Rajasthan.	2,00,000
All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.		
The balance of Input Tax Credit (ITC) with Pari Ltd. as on 1st April, 20XX is CGST ₹ 20,000 SGST ₹ 15,000 IGST ₹ 15,000		

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the eligible input tax credit have been complied with by Pari Ltd., wherever applicable.

Compute eligible input tax credit and net GST payable (CGST and SGST or IGST as the case may be) by Pari Ltd. for the month of April, 20XX.

Computation of eligible input tax credit available with Pari Ltd. in the month of April, 20XX

S. No.	Particulars	Eligible input tax credit		
		CGST ₹	SGST ₹	IGST ₹
1.	**Raw Material:**			
	Purchased from local registered suppliers [Note 1(i)] (` 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	
	Purchased from Punjab from registered supplier [Note 1(i)] (` 1,00,000 x 18%)			18,000
	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] [(1,56,250-31,250) x 9%]	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (` 2,00,000 x 9%)	18,000	18,000	-
	Total	47,812.50	47,812.50	40,732
	Add: Opening balance of ITC on 01.04.20XX	20,000	15,000	15,000
	Eligible ITC [Note 7]	**67,812.50**	**62,812.50**	**55,732**

Computation of net GST payable for the month of April, 20XX

Particulars	**CGST ₹**	**SGST ₹**	**IGST ₹**
Intra-State supply	78,750	78,750	
Inter-State supply			67,500
Exports under LUT [Note 6]	Nil	Nil	Nil
Total output tax liability	**78,750**	**78,750**	**67,500**
Less: Eligible ITC	67,812.50	62,812.50	55,732
Net GST payable	**10,937.50**	**15,937.50**	**11,768**

Notes:

1. (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.

   (ii) Tax on procurements made by a registered person from an unregistered supplier is levied only in case of notified goods and services in terms of section 9(4). Therefore, since no GST is paid on such raw material purchased, there does not arise any question of input tax credit (ITC) on such raw material.

   (iii) IGST paid on imported goods qualifies as input tax in terms of section 2(62) of CGST Act, 2017. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.

2. ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.

3. ITC on monthly rent is available as the said service is used in the course or furtherance of business.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with

Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

5. ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b).

6. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under bond is made without payment of IGST in terms of section 16(3)(a).

7. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

8 Mr. George, a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during April 20XX:

Source	Purchases(₹)	Sales (₹)	Tax Rate
New Delhi	5,00,000	10,00,000	18%
Trivandrum	2,50,000	8,00,000	9%each for SGST& CGST
Total	7,50,000	18,00,000	

He has complied with all the conditions for availing the ITC and has the following ITC credit on 01-04-20XX:

Source	Taxes (₹)	Interest (₹)	Penalty (₹)
CGST	50,000	1500	500
SGST	30,000	1500	500
IGST	1,00,000	2000	500

Compute the minimum net CGST, SGST and IGST payable by Mr. George during April 20XX in cash?

Computation of net CGST, SGST and IGST payable in cash by Mr. George during April 20XX

Particulars	Amount (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Sales made outside Kerala (New Delhi) – [Being inter-State sale, the same is liable to IGST.]	10,00,000			1,80,000
Sales made in Trivandrum	8,00,000	72,000	72,000	
Less: ITC available during April 2018 for set off [Refer Working Note Below]		(72,000) CGST	(10,000) IGST	(1,80,000)
			(52,500) SGST	
Net tax liability payable in cash		**Nil**	**9,500**	**Nil**
Net ITC available		**500**	**Nil**	**Nil**
Working Note: ITC available during April 20XX is computed as under:				
Opening balance of ITC		50,000	30,000	1,00,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		**72,500**	**52,500**	**1,90,000**
Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross-utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow. Interest and penalty paid are not available as credit.				

9 **Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July, 20XX to supply 10 valves on FOR basis for its project, with following terms and conditions:**

(1) List price per valve is ₹ 1,00,000, exclusive of taxes.

(2) The valves go through two stage third party inspection during manufacturing, as required by R Refinery. Cost of inspection of ₹ 15,000 is directly paid by R Refinery to testing agency.

(3) A special packing is to be done, as required by R Refinery. Cost of special packing is ₹ 10,000.

(4) After making supply of valves, Flowchem has to arrange for erection and testing at the site for commissioning. Cost of erection etc. is of ₹ 15,000.

(5) The goods were dispatched with tax invoice on 20th July, 20XX and they reached the destination at Abu-Road on 21st July, 20XX. The lorry freight of ₹ 5,000 has been paid by R Refinery directly to lorry driver.

Assume the CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening ITC of CGST is ₹ 20,000 and SGST is ₹ 20,000. All the given amounts are exclusive of GST, wherever applicable.

It has also undertaken following local transactions during the month of July, 20XX on which it has paid CGST and SGST as under:

S. No.	Particulars	Amount paid CGST (₹)	Amount paid SGST (₹)
1.	It has availed services of works contractor to erect foundation for fixing the machinery to earth in the factory.	5,000	5,000
2.	It has laid pipe line upto the gate of its factory to bring the water to the factory for the purpose of production facility.	10,000	10,000

3.	**For the purpose of smooth and convenient communication in its factory, it has installed telecommunication tower of a mobile company (with due permission), the mobile phones of which have been provided to staff for factory work.**	**5,000**	**5,000**
4.	**It has entered into an agreement with a travel company to provide home travel facility to its employees when they are on leave.**	**2,500**	**2,500**
5.	**It has entered into an agreement with a fitness centre to provide wellness services to its employees after office hours**	**2,000**	**2,000**

Work out the GST liability [CGST& SGST or IGST, as the case may be] of Flowchem Palanpur (Gujarat) for July, 20XX after making suitable assumptions, if any.

Computation of GST liability of Flowchem, Palanpur (Gujarat) for July 20XX

Particulars	**CGST @ 9% (₹)**	**SGST @ 9% (₹)**	**IGST @ 18% (₹)**
Output tax liability [Working Note 1]			1,88,100
Less: ITC available for set off [Working Note 2]	25,000	25,000	
			(25,000) CGST
			(25,000) SGST
Net GST liability payable in cash			**1,38,100**

Working Note 1 - Computation of output tax liability of Flowchem for July 20XX

Particulars	**Amount (₹)**
List price of 10 valves (₹ 1,00,000 x 10)[1]	10,00,000
Add: Amount paid by R Refinery to testing agency [Note 1]	15,000
Add: Special packing [Note 2]	10,000
Add: Erection and testing at site [Note 2]	15,000
Add: Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	**1,88,100**

Notes:

(1) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Assuming that in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for the same, however, have been paid directly to the third party service provider by the recipient. Therefore, the value shall be included in taxable value.

(2) As per section 15(2) of the CGST Act, 2017, 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 shall be included in the value of supply.

(3) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price

[1]It has been assumed that the charges for inspection, special packing, erection and freight are in respect of 10 valves.

actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

(4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2 - Computation of ITC available with Flowchem for the month of July 20XX

Particulars	**CGST (₹)**	**SGST (₹)**
Opening input tax credit	20,000	20,000
Wok contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Laying of pipe line upto the gate of factory [Note 2]	Nil	Nil
Installation of telecommunication towers [Note 2]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 3]	Nil	Nil
Services of fitness centre to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	**25,000**	**25,000**

Notes:

(1) As per section 17(5) of the CGST Act, 2017, 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, is blocked**.** Further, plant

and machinery includes foundation and structural supports used to fix the machinery to earth.

(2) As per section 17(5) of the CGST Act, 2017, ITC on goods and/ or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and/ or services are used in course/ furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication towers.

(3) As per section 17(5) of the CGST Act, 2017, ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

10 Mr. NY, a supplier of goods pays GST under regular scheme. Mr. NY is not eligible for any threshold exemption. He has made the following outward taxable supplies during September 20XX:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	–	8,00,000
Product B	9%	9%	–	2,00,000
Inter State Supply of goods				
Product A	–	–	12%	3,00,000
Product B	–	–	18%	1,50,000

He has also furnished the following information in respect of supplies received by him during September 20XX:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	–	2,00,000
Product B	9%	9%	–	1,00,000
Inter State Supply of goods				
Product A	–	–	12%	1,50,000
Product B	–	–	18%	80,000

Mr. NY has following ITCs with him at the beginning of September 20XX:

Particulars	₹
CGST	40,000
SGST	28,000
IGST	44,600

Note:

(i) Both inward and outward supplies are exclusive of taxes, wherever applicable.

(ii) All the conditions necessary for availing the ITC have been fulfilled.

Compute net GST payable by Mr. NY for the month of September 201XX.

Make suitable assumptions wherever required.

Computation of GST payable by Mr. NY for the month of September, 20XX:

S.No.	Particulars	CGST (₹)	SGST (₹)	IGST (₹)
(i)	**Intra-State supply of goods**			
	Product A	48,000	48,000	
	Product B	18,000	18,000	
(ii)	**Inter-State supply of goods**			
	Product A			36,000
	Product B	____	____	27,000
	Total	**66,000**	**66,000**	**63,000**

Computation of total ITC available

S.No.	Particulars	CGST (₹)	SGST (₹)	IGST (₹)
(i)	**Opening balance**	40,000	28,000	44,600
(ii)	**Intra-State supply of goods**			
	Product A	12,000	12,000	
	Product B	9,000	9,000	
(iii)	**Inter-State supply of goods**			
	Product A			18,000
	Product B	____	____	14,400
	Total	**61,000**	**49,000**	**77,000**

Computation of net GST payable (from cash ledger)

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
GST payable	66,000	66,000	63,000

Less: ITC	(61,000)-CGST	(14,000)-IGST	(63,000)-IGST
		(49,000)-SGST	
Net GST payable	**5,000**	**3,000**	**Nil**

Note 1. ITC of IGST shall be first utilize fully to pay IGST, CGST and SGST in that order.

Note 2. IGST credit after setting it against IGST liability of Rs. 63,000/- i.e. Rs. 14,000/- to be adjusted first with SGST liability since CGST credit is almost sufficient to set off CGST liability.

11 Determine the value of supply and the GST liability, to be collected and paid by the owner, with the following particulars:

	₹
Rent of the commercial building	**18,00,000**
Maintenance charges collected by local society from the owner and reimbursed by the tenant	**2,50,000**
Owner intends to charge GST on refundable advance, as GST is applicable on advance	**6,00,000**
Municipal taxes paid by the owner	**3,00,000**

GST rates applicable on renting of business premises are as follows:

CGST 9%

SGST 9%

Provide suitable explanations where required.

Computation of Value of Supply and GST liability:

Particulars	Amount (₹)
Rent of the commercial buiding	18,00,000
Maintenance charges collected by the local society from the owner and reimbursed by the tenant [Being reimbursed by the tenant, such charges ultimately form	2,50,000

part of the rent paid by the tenant to the owner and thus, will form part of the value]	
Refundable advance [Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value]	Nil
Municipal taxes paid by the owner [Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.]	Nil
Value of supply	**20,50,000**
CGST @ 9%	**1,84,500**
SGST @ 9%	**1,84,500**

Note: Rent and maintenance charges are assumed to be exclusive of GST.

12 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, 20XXand registration certificate has been granted to it on 25th September, 20XX. The CGST and SGST liability for the month of September, 20XX is ₹ 24,000 each.

Quanto Ltd. provides the following information of inputs and capital goods held in stock on 24th September, 20XX. It is not engaged in making inter-State outward taxable supplies.

Particulars	**Amount (₹)**
Input procured on 02-09-20XXlying in stock	
- CGST @ 6%	**4,500**
- SGST @ 6%	**4,500**
Input received- on 21-07-20XXcontained 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 19-09-20XX (Last Year)	
- IGST @ 18%	**36,000**
Inputs valued at ₹ 50,000 procured on 13-09-20XX lying in stock:	
- IGST @ 18%	**9,000**
Capital goods procured on 12-09-20XX	
-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, 20XX.

You are also required to mention reasons for treatment of all above items.

Computation of net GST liability (to be paid in cash) by Quanto Ltd. for the month of September, 20XX:

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

Notes:

1. 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].

2. 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 25.09.20XX, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24.09.20XX. In view of the said provisions, eligible ITC for Quanto Ltd.is computed as follows:

Particulars	**CGST (₹)**	**SGST (₹)**	**IGST (₹)**
Inputs held in stock since 02.09.20XX	4,500	4,500	
Inputs received on 21.07.20XX contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19.09.20XX (Last Year)[2] [Procured prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13.09.20XX			9,000
Capital goods procured on 12.09.20XX	Nil	Nil	
Total ITC	12,000	12,000	9,000

[2] *It has been assumed that invoice for the said goods is also dated 19.09.20XX (Last Year).*