Module 2 - GST - Index

8 REGISTRATION

Multiple Choice Questions

1. Mrs. Reena is a consultant. She has provided the following details relating to services provided and received by her during the current financial year:

   (i) Supply of management consultancy services for ₹ 5,00,000 p.a.

   (ii) Supply of accounting services for ₹ 2,00,000 p.a.

   (iii) Immovable property rented out for residential purposes for ₹ 10,000 p.m.

   (iv) Management consultancy services provided to a hospital for ₹ 50,000 one time

   (v) Services provided to a client outside India for ₹ 50,000 p.m.

   (vi) Services received from a lawyer for ₹ 1,00,000

   Note: Assume that amounts given above are exclusive of GST, wherever applicable.

   What shall be her aggregate turnover for the current financial year under GST provided her aggregate turnover during previous financial year was ₹ 24 lakh?

   (a) ₹ 9,10,000

   (b) ₹ 15,70,000

   (c) ₹ 14,70,000

   (d) ₹ 8,20,000 (2 Marks April '23)

Answer: (C)

2. State which of the following statements is incorrect:

   (i) An agent, supplying taxable goods on behalf of principal, where invoice is issued in the name of principal, is required to get compulsorily registered under GST.

   (ii) Persons who are required to deduct tax under section 51 of the CGST Act, 2017, whether or not separately registered under CGST Act, are compulsory required to get registered under GST without any threshold limit.

   (iii) Every person supplying online information and database access or retrieval services from a place outside India to a registered person in India is compulsory required to get registered under GST without any threshold limit.

   (iv) Persons who supply services, other than supplies specified under sub-section (5) of section 9 of the CGST Act, 2017, through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017, are compulsory required to get registered under GST without any threshold limit.

   Choose the most appropriate option.

   (a) (i), (ii)

   (b) (iii), (iv)

   (c) (i), (iii), (iv)

   (d) (i), (ii), (iii) and (iv) (2 Marks MTP Oct 22)

Answer: (C)

Practical Theory

3. 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 product 'X' only within Tamil Nadu and is not registered under GST. Further, all the inward supply of the company are taxable under forward charge. 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 1st July. The purchase price of the capital goods was Rs. 30 lakh exclusive of GST @ 18%.

   However, effective from 1st November, 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 30th September was Rs. 45 lakh.

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

Answer:

(a) Section 22(1) 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 Rs. 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).

In the given case, the turnover of the company for the half year ended on 30th September is Rs. 45 lakh which is more than the applicable threshold limit of Rs. 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).

However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above Rs. 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of Rs. 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' prior to 1st November will also be considered for determining the limit of Rs. 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

4. 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 Rs. 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.? (MTP MAY 2018)

Answer:

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.

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. 22 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 Rs.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. As per the latest amendment w.e.f 1st October 2023, a supplier of goods supplying through ECO liable for TCS u/s 52 need not register compulsorily. However ECO should not let them make interstate supply, Supplier of goods should have a PAN number and enrolment number from GST Common portal.

5. Pari & Sons is an unregistered dealer. On 10th August, aggregate turnover of Pari & Sons exceeded Rs. 40,00,000. The firm applied for registration on 27th August and was granted the registration certificate on 1st September. 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. (PAST EXAM MAY 2018) (MTP NOV 2020)

Answer:

Section 22(1) 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) 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 27th August which is within 30 days from the date of becoming liable to registration (10th August), its effective date of registration is 10th August.

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) read with rule 53(2) of CGST Rules, 2017]23.

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 (10th August) and the date of issuance of registration certificate (1st September), on or before 1st October.

6. Determine whether registration has to be obtained under GST in case of the following as per provisions contained under CGST Act, 2017.

(i) Fine oils is engaged in the business of machine oil as well as petrol and diesel. The total turnover on supply of machine

oil is only Rs. 8 lakhs and in case of petrol and diesel is Rs. 8 crores.

(ii) Ramlal, an agriculturist, for supply of produce out of cultivation of land amounting to Rs. 41 lakhs. (MTP NOV 2018)

Answer:

(i) Supply of petrol and diesel is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Fine oils is liable for registration, turnover of both the supplies, non taxable as well as taxable would be taken into account for the threshold of Rs. 40 lakhs. Here the turnover of machine oil, petrol and diesel exceeds Rs. 40 lakhs (Rs. 8.08 crores). Thus, Fine oils is liable for registration.

(ii) As per section 23 of the CGST Act, an agriculturist, to the extent of supply of produce out of cultivation of land is not liable for registration under GST. In the case of Mr. Ramlal, even though the turnover of produce out of cultivation has exceeded Rs. 40 lakhs, he will not be liable for registration.

7. Dharma Dutta has taken voluntary registration and has not opted for the composition scheme of levy. He is aggrieved by the cancellation of his registration under GST, although he is filing Nil returns, as he has not conducted any business for the past 8 months. He wants to know the circumstances under which the proper officer can cancel registration on his own. (PAST EXAM NOV 2019)

Answer:

GST registration may be cancelled suo-motu by GST Officer if the registered person: -

(i) Does not conduct any business from the place of business

(ii) Violates the anti-profiteering provisions

(iii) Issues invoice/bill without supply of goods / services

(iv) Noncompliance of Rule 10A

(v) Does not file his GST return for six months

(vi) Does not file his GST return consecutive tax periods if he has opted for composition levy.

(vii) Has not commenced business within 6 months from date of registration

(viii) Has obtained the registration by means of fraud, willful mis- statement or suppression of facts.

(ix) Avails input tax credit in violation of the provisions of section 16 of the CGST Act or the rules made thereunder.

(x) Furnishes the details of outward supplies in Form GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods

(xi) Violates the provision of rule 86B

8. Decide with reason whether the registration is required under CGST Act, 2017 in the following independent cases: (PAST EXAM NOV 2020)

(i) A casual taxable person (CTP) has provided inter-State supply of notified products being textiles hand printing amounting to ₹ 19.25 lakh during the month of January, 2020. Those products were made by craftsmen by both hand and machines equally. CTP had obtained PAN and generated e-way bill for supply.

(ii) Mr. Bantu of Delhi doing trading business across India and his intra-State turnover details are as below,

(a) Taxable supplies made from Delhi - ₹ 18 lakh.

(b) Exempt supplies made from Andhra Pradesh - ₹ 10 lakh.

(c) Both taxable and exempt supplies made from Tamilnadu - ₹ 5,00,000 and ₹ 6,00,000 respectively.

Answer:

(i) A casual taxable person (CTP) is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, CTPs making inter-State taxable supplies of notified products, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process, have been exempted from obtaining registration if their aggregate turnover does not exceed ₹ 20 lakh [₹ 10 lakh for specified special category States].

Since, in the given case, the notified products were made by craftsmen by both hand and machines equally, they are not eligible for exemption and are required to obtain registration mandatorily.

(ii) For a supplier exclusively engaged in intra-State supply of goods, the threshold limit of turnover to obtain registration in the States of Delhi, Andhra Pradesh and Tamil Nadu is ₹ 40 lakh. Aggregate turnover includes value of all taxable and exempt supplies under same PAN.

Thus, aggregate turnover of Mr. Bantu doing trading business across India (It has been assumed that Mr. Bantu makes only intra -State supplies across India.)

= ₹ (18 lakh +10 lakh + 5 lakh + 6 lakh)

= ₹ 39 lakh.

Therefore, Mr. Bantu is not liable for registration as his turnover does not exceed ₹ 40 lakh.

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

(i) 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.

(ii) Mehta Teleservices is an architect 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.

Answer:

(i) Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [Rs. 40 lakh in this case] in a financial year [Section 22 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.

(ii) 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.

10. Mr. X of Mumbai often participates in the jewellery exhibition at Trade Fair in Delhi, which is organised every year in the month of February. Mr. X applied for registration in January. The proper officer demanded an advance deposit of tax in an amount equivalent to the estimated tax liability of Mr. X. You are required to examine whether any advance tax is to be paid by Mr. X at the time of obtaining registration?

Answer:

Yes, advance tax is to be paid by Mr. X at the time of obtaining registration. Since Mr. X occasionally undertakes supply of goods in the course or furtherance of business in a State where he has no fixed place of business, thus he qualifies as casual taxable person in terms of section 2(20) of CGST Act, 2017. While a normal taxable person does not have to make any advance deposit of tax to obtain registration, a casual taxable person shall, at the time of submission of application for registration is required, in terms of section 27(2) read with proviso thereto, to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. If registration is to be extended beyond the initial period of 90 days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond 90 days is being sought.

11. Comment on the liability to get registered under the GST law in the given independent situations for the financial year 2020-21. Your answer should also include relevant provisions of law, notifications or circulars.

(i) Miss Riddhima is exclusively engaged in the export of readymade garments from the State of Rajasthan and her export turnover during the year is ₹ 17 lakh. Apart from export turnover, she has earned interest on bank FDR for ₹ 2 lakh also.

(ii) Ajanta Enterprises is exclusively engaged in the trading of exempt goods under GST in the State of Haryana and has not taken the GST registration. During the year, its turnover from exempt supplies is ₹ 47 lakh and Ajanta Enterprises also sold old generator for ₹ 1.25 lakh during the year.

(iii) Mr. P has presence in two States, one in Haryana and other in Rajasthan. He is registered in the State of Rajasthan even without crossing the threshold limit. His turnover during the year in Rajasthan is ₹ 32 lakh and in Haryana is ₹ 5 lakh. Is he mandatorily required to get registered in the State of Haryana also?

(iv) Mr. John is engaged in the business of buying and selling of shares on his own account from the secondary market and his income from this activity is assessed as business income under the Income- tax Act 1961. During the year his total sales turnover from shares was ₹ 90 lakh. (4 Marks PP Dec '21)

Answer:

(i) Export of goods is treated as inter-State supply. Miss Riddhima is liable to obtain registration compulsorily irrespective of the quantum of her aggregate turnover since she is engaged in making inter-State supply (exports) of goods.

(ii) Any person engaged exclusively in making exempt supplies is not liable to registration. However, Ajanta Enterprises is liable to get registered as it has also made a taxable supply along with exempt supplies during the year and its aggregate turnover (₹ 48.25 lakh) exceeds the threshold limit for registration.

(iii) Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates under the same PAN. Therefore, Mr. P is liable to get registered in Haryana also, provided he is not engaged exclusively in making exempt supplies from Haryana. However, it is also possible to take a view that a person who is voluntarily registered in one State needs to obtain registration in other States from where he makes a taxable supply only if his aggregate turnover exceeds applicable threshold limit for registration. In that case, Mr P is not liable to obtain registration from Haryana since the aggregate turnover does not exceed the threshold limit for registration.

(iv) A supplier is liable to obtain registration in a State/UT from where he makes a taxable supply of goods and/or services. Shares are excluded from the definition of goods as well as services. Hence, buying and selling of shares is not a supply of goods and/or services under GST law. Thus, Mr. John is not liable to obtain registration since he is not engaged in making a taxable supply of goods and/or services.

12. Comment on the given independent situations relating to GST procedures. Your Answer should include relevant provisions of law, as may be applicable:

Jugnoo Enterprises, a trader engaged in the buying and selling of medicines within the State of Delhi, is not registered under GST. It exceeded the turnover of ₹ 20 lakh on 15th July 2025 and also exceeded the turnover of ₹ 40 lakh on 14th February 2026. It applied for registration under GST on 28th February and registration certificate was granted on 2nd March 2022. Determine the date on which liability to register arises and the effective date of registration in this case.(2 Marks May '22)

Answer:

Since Jugnoo Enterprises is engaged exclusively in intra-State taxable supply of goods in Delhi, it becomes liable to register when its aggregate turnover exceeds ₹ 40 lakh, i.e., on 14th February, 2022. Further, since it has applied for registration within 30 days from the date of becoming liable to register, the effective date of registration is the date on which it becomes liable to register, i.e., 14th February, 2022.

Number Based Questions

13. Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments 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
	(Rs.)*	(Rs.)*	(Rs.)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
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:-

Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case assuming that it is not required to pay any tax on inward supplies under reverse charge.

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

a. If Mahadev Enterprises is dealing exclusively 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 (other than notified handicraft goods) amounting to Rs. 4,00,000. (RTP NOV 2019)

Answer:

As per section 22 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:-

Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

Rs. 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

Rs. 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:-

Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

Rs. 20 lakh for the rest of India.

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

all taxable supplies,

all exempt supplies,

exports of goods and/or services and

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
	(Rs.)*	(Rs.)*	(Rs.)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Intra-State supply of non-taxable goods [As per section 2(47), 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]	-	21,00,000	40,000
Aggregate Turnover	22,50,000	21,00,000	13,40,000

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh, Tripura and Uttarakhand. However, since Mahadev Enterprises makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), it will not be eligible for the higher threshold limit of Rs. 40 lakh; instead, the threshold limit for registration will be reduced to Rs. 10 lakh.

In view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to Rs. 56,90,000 (computed on all India basis). The applicable threshold limit of registration in this case is Rs. 10 lakh. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

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

If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of Rs. 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 Rs. 20 lakh and hence, Mahadev Enterprises will be liable to registration.

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

14. 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
	(Rs.)*	(Rs.)*
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
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.

Answer:

As per section 22 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) Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

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

(iii) Rs. 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) Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) Rs. 20 lakh for the rest of India.

As per section 2(6), 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 goods and services from Maharashtra and non- taxable supplies fromUttarakhand, 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 (Rs.)	Cumulative turnover of February & March (Rs.)
Serving of cooked food and cold	5,50,000	12,00,000 [Rs.

drinks/non-alcoholic		5,50,000 +
beverages in restaurant in Maharashtra		Rs. 6,50,000]
Add: Sale of alcoholic liquor for human consumption in Uttarakhand [As per section 2(47), 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.]		5,00,000
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [Rs. 1,50,000 + Rs. 2,00,000]
Aggregate Turnover	₹,00,000	20,50,000

Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed Rs. 20 lakh in that month. However, since its aggregate turnover exceeds Rs. 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.

15. 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.

Sl. No.	Particulars	Amount (Rs.)
(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 by declaring the place of M/s Jayant Enterprises as its additional place of business.	3,00,000
(iii)	Export of goods to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(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. (PAST EXAM MAY 2018)

Answer:

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

Particulars	Rs.
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 Rajasthan24 [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), 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).
2) Supply of goods after completion of job work by a principal by declaring the place of business of job worker its additional place of business shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22.
3) Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).
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 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. Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
ii. Rs. 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
iii. Rs. 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. Rs. 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
ii. Rs. 20 lakh for the rest of India.

The applicable turnover limit for registration, in the given case, will be Rs. 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 Rs. 20 lakh, it is compulsorily required to register in terms of section 24(i) irrespective of the turnover limit as it is engaged in making inter-State supply of goods in the form of exports to England.

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

Particulars	Rs.
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 Rs.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 in the given circumstances.

(MTP JULY 2021) (MTP MAY 2020)

Answer:

Computation of aggregate turnover of Rajesh Dynamics:

Particulars	Rs.
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)]	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 Rs. 40 lakh. However, since Rajesh Dynamics also makes taxable supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to Rs. 10 lakh in terms of section 22(1) [Notification No.10/2019-CT dated. 07.03.2019].

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of Rs. 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 Rs. 10 lakh and not Rs. 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 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.

17. Bindusara commences the business of supplying taxable goods locally within the State of Rajasthan in April. He is not yet registered under GST. As his aggregate turnover reaches Rs. 8 lakh by the end of the month of June, Bindusara starts exploring the option to sell the goods supplied by him within Rajasthan on a popular electronic commerce platform – E-vastu store by listing the goods on the said platform.

He approaches you for advice on following issues in this regard:

A. Bindusara wishes to continue his business without registering under GST since it will enhance the compliance burden under GST law. Can he supply the goods through E-vastustore without obtaining GST registration? You are required to advise him.

B. Discuss the GST implications in case Bindusara supplies goods through electronic commerce platform – E-vastu store.

(RTP MAY 2024)

Answer:

(A)

Yes, Bindusara can supply goods through E-vastustore without obtaining GST registration.

As per section 24(ix), persons who supply goods and/or services, other than services notified under section 9(5), through such electronic commerce operator (hereinafter referred as ECO) who is required to collect TCS under section 52 is required to obtain registration mandatorily.

However, the persons making supplies of goods through an ECO who is required to collect TCS and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are exempted from obtaining registration, vide *Notification No. 34/2023 CT dated 31.07.2023,* subject to the following conditions, namely:

(i) such persons shall not make any inter-State supply of goods;

(ii) such persons shall not make supply of goods through ECO in more than one State/Union territory;

(iii) such persons shall be required to have a PAN issued under the Income-tax Act, 1961;

(iv) such persons shall, before making any supply of goods through ECO, declare on the common portal:

(a) their PAN

(b) address of their place of business and

(c) State/UT in which such persons seek to make such supply,

which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared above;

(vi) such persons shall not be granted more than one enrolment number in a State/UT;

(vii) no supply of goods shall be made by such persons through

ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

Thus, Bindusara can supply goods through E-vastustore without obtaining GST registration till the time its aggregate turnover does not exceed the threshold limit in accordance with the provisions of section 22(1) thereby complying with the aforesaid conditions.

(B)

As Bindusara is not required to obtain registration under GST, there shall be no GST implications on the supplies made by him through electronic commerce platform - E-vastustore.

However, the electronic commerce operator - E-vastustore - is required to submit the details of supplies made through it by the unregistered suppliers (including Bindusara) having enrolment number in Form GSTR 8. Further, no tax at source shall be collected by the E-vastustore in respect of such supplies.

9 INVOICE

Multiple Choice Questions

1. **Which of the following statements is correct while issuing a tax invoice?**

   (i) Place of supply in case of inter-State supply is not required to be mentioned

   (ii) The power of attorney holder can sign the tax invoice in case the taxpayer or his authorised representative has been travelling abroad

   (iii) Quantity is not required to be mentioned in case of goods when goods are sold on "as is where is basis"

   (iv) Description of goods is not required to be given in case of mixed supply of goods

   (a) (ii), (iii)

   (b) (i), (ii), (iii)

   (c) None of theabove

   (d) All of the above (2 Marks Oct '19, Apr'22)

Answer: (c)

Theory

2. **Enumerate the suppliers to whom the Dynamic Quick Response (QR) code is not applicable when they issue an invoice to an unregistered person. (4 Marks May '22)**

Answer:

Dynamic Quick Response (QR) code is not applicable to following suppliers when they issue an invoice to an unregistered person:-

(i) Insurer or banking company or financial institution including NBFC

(ii) GTA (Goods transport agency) supplying services in relation to transportation of goods by road in a goods carriage

(iii) Supplier of passenger transportation service

(iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

(v) Supplier of OIDAR (online information and database access or retrieval) services.

(vi) In case of exports

Practical Theory

3. **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 Rs. 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. (RTP NOV 2018)

Answer:

(i) No, he is not required to issue tax invoice in all cases. As per section 31(1), every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice. Further, rule 46A 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) read with rule 46, a registered person may not issue a tax invoice if:

(a) value of the goods supplied <Rs. 200,

(b) the recipient is unregistered; and

(c) 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, 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, 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.

As per rule 46(m), a tax invoice shall contain the various particulars, interalia, namely, amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.

4. Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1. Its turnover exceeded Rs. 40 lakh on October 3. The firm applied for registration on October 31 and was issued registration certificate on November 5. 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. (MTP MAY 2018)

Answer:

As per section 31(3)(a), 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) 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. Therefore, since in the given case there is a time lag between the effective date of registration (October 3) and the date of grant of certificate of registration (November 5), 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 till November 5. Further, the revised invoices can be issued for the said period till December 5.

5. 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. (Exam May 18)

Answer:

(i) As per section 31(3)(e), 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 may be issued to the person who had made the advance payment.

(ii) As per section 31(7), 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), 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.

6. An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition. ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August, Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice. (RTP MAY 2020)

Answer:

No, the view of ANEH that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) it should be for a consideration by a person; and

(ii) it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act defines "zero rated supply" as any of the following supplies of goods or services or both, namely:

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, only such "supplies" which are either "export" or are "supply to SEZ unit/ developer" would qualify as zero-rated supply.

In view of the above provisions, Circular No. 108/27/2019 GST dated 18.07.2019 clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "zero rated

supply" as per the provisions contained in section 16 of the IGST Act.

The said circular further clarified that the activity of sending/taking goods out of India for exhibition is in the nature of "sale on approval basis" wherein the goods are sent/ taken outside India for the approval of the person located abroad and it is only when the said goods are

approved that the actual supply from the exporter located in India to the importer located abroad takes place.

The activity of sending/ taking specified goods is covered under the provisions of section 31(7) of the CGST Act, 2017 read with rule 55 of CGST Rules, 2017. As per said provisions, in case of the goods being sent or taken on approval for sale, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier. The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan.

In view of the said provisions, ANEH is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply.

However, the goods shall be accompanied with a delivery challan. Further,

(i) In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by ANEH in February, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

(ii) In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by ANEH in August, i.e. after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods in accordance with the provisions contained in section 12 [determining time of supply of goods] and section 31 [tax invoice] of the CGST Act, 2017 read with rule 46 [tax invoice] of the CGST Rules, 2017 within the time period stipulated under section 31(7) of the CGST Act, 2017.

However, if an aggregate of 65 units of the goods are sold in USA exhibition by ANEH on different dates in January (i.e. within the stipulated period of 6 months), a tax invoice would be required to be issued for these units, at the time of each of these sales, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. When the goods are sold in exhibition, actual supply from the exporter in India to the importer located abroad takes place and this supply qualifies as export. Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017.

If the remaining 35 units are brought back on 31st January, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. Further, tax advisor's advice is technically correct. Since the

activity of sending / taking specified goods out of India is not a zero- rated supply, execution of a bond/Letter of Undertaking (LUT), as required under section 16 of the IGST Act, is not required.

However, the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond/LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 in respect of zero-rated supply of 65 units.

7. Subhashini Ltd. agreed to provide consultancy services to Madhu Enterprises in the month of May for which it received an advance of ₹1,00,000 on 20th April from Madhu Enterprises. Subsequently, in the month of May, before supply of service, the said service contract has to be cancelled owing to some inadvertent circumstances. However, Subhashini Ltd. has issued the invoice for the advance received in April itself and has paid the GST thereon. You are the tax consultant of Subhashini Ltd. Please advise whether it can claim refund of tax paid or is it required to adjust its tax liability in its returns? (RTP NOV 2020)

Answer:

In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act, 2017. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim.

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a refund claim [Circular No. 137/07/2020 GST dated 13.04.2020].

Therefore, in the given case, Subhashini Ltd. is required to issue a credit note, declare its details in the return for the month during which such credit note has been issued and adjust the tax liability. However, if there is no output liability of Subhashini Ltd. against which the said credit note can be adjusted, it may proceed to file a refund claim.

8. **Bhumika 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 Naveen 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 Bhumika Caretakers issue the invoice for the services rendered?**

Answer:

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 Bhumika Caretakers on a quarterly basis, under a contract, for a period of 1 year with the obligation for quarterly payment.

In terms of section 31 of the CGST Act, 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, Bhumika Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

9. **Jain & Sons is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:**

Sr. No	Recipient of Supply	Amount
1	Raghav Traders – a registered retail dealer	190
2	Dhruv Enterprises – an unregistered trader	358
3	Gaurav- a Painter [unregistered]	500
4	Oberoi Orphanage – an unregistered entity	188
5	Aaradhya – a Student [unregistered]	158

None of the recipients require a tax invoice [Raghav Traders being a composition dealer].in respect of which of the above supplies, Jain & Sons may issue a Consolidated Tax Invoice instead of Tax Invoice at the end of the day?

Answer:

In the given illustration, Jain & Sons can issue a Consolidated Tax Invoice only with respect to supplies made to Oberoi Orphanage [worth Rs. 188] and Aaradhya [worth Rs. 158] as the value of goods supplied to these recipients is less than Rs. 200 as also these recipients are unregistered and don't require a tax invoice. As regards the supply made to Raghav Traders, although the value of goods supplied to it is less than Rs. 200, Raghav Traders is registered under GST. So, Consolidated Tax Invoice cannot be issued.

Consolidated Tax Invoice can also not be issued for supplies of goods made to Dhruv Enterprises and Gaurav although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than Rs. 200.

10. The aggregate turnover of Sangri Services Ltd., Delhi 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. (MTP NOV 2019)

Answer:

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 certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

11. Sanmati Industries, registered in the State of Maharashtra, receives a machinery for repair in its workshop located in Mumbai, Maharashtra from Titsubishi Ltd., an automobile manufacturing company based in Japan. The repair work was carried out by Sanmati Consultants for which it was paid in convertible foreign exchange. While raising the invoice for the said consideration, the accountant of Sanmati Consultants approaches you as to whether the Dynamic Quick Response (QR) code is mandatorily required on said invoice? You are required to advise him on the same. Note – Titsubishi Ltd. is not registered in India. Further, the aggregate turnover of Sanmati Consultants was Rs. 550 crores in the preceding financial year. (Nov'22)

Answer:

The place of supply for the services provided by Sanmati Consultants to Titsubishi Ltd. is as follows:

As per section 13(3)(a) of the IGST Act, 2017, in case where the services are supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, the place of supply of such services shall be the location where the services are actually performed. In the given case, for carrying out the repair work, machinery was required to be made physically available by Titsubishi Ltd. to Sanmati Consultants. Thus, the place of supply of services in this case is the location where the services are actually performed i.e., Maharashtra, India. Further, sixth proviso to rule 46 read with Notification No. 14/2020 CT dated 21.03.2020 provides that all invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017- 18 onwards exceeds Rs. 500 crores, in respect of B2C supplies (supply of goods or services or both to an unregistered person) will mandatorily have a Dynamic QR code. Thus, the invoices issued by Sanmati Consultants to unregistered persons are mandatorily required to have a Dynamic QR Code. Accordingly, since Titsubishi Ltd. is not registered in India, invoice to be raised by Sanmati Consultants to it

should mandatorily have a Dynamic Quick Response (QR) code. However, Circular No. 165/21/2021 GST dated 17.11.2021 has clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in convertible foreign exchange, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier. Thus, the Dynamic Quick Response (QR) code is NOT mandatorily required on the invoice to be issued by Sanmati Consultants to Titsubishi Ltd.

12. Sunita Industries, registered in the State of Gujarat, receives machinery for repair in its workshop located in Surat, Gujarat on 4th April, 2024 from Titen Ltd., an automobile manufacturing company based in China. Titen Ltd. is not registered in India. The repair work was carried out by Sunita Industries for which it was paid in convertible foreign exchange. The aggregate turnover of Sunita Industries was Rs. 450 crore in the preceding financial year 2023-2024 but for the financial year 2022-2023 the turnover was Rs. 562 crore.

While raising the invoice for the said consideration, the accountant of Sunita Industries approaches you as to whether the Dynamic Quick Response (QR) code is mandatorily required on said invoice?

You are required Lo advise him on the same by explaining the relevant provisions of GST law with reference to Dynamic Quick Response code along with applicable provisional of place of supply.

(NOV 2024)

Answer:

ALTERNATIVE-I

Where it is assumed that the machinery is exported without being put to any use in India:

The place of supply of the services supplied in respect of goods which are temporarily imported into India for repairs and are exported after such repairs without being put to any use in India where supplier is in India and recipient is located outside India, is the location of the recipient of services, location outside India i.e. China.

Thus, place of supply of repair services provided to Titen Ltd. in the given case is China.

Further, said repair services shall qualify as "export of services" since:

- supplier is in India,
- both recipient and place of supply are outside India,
- the payment for service is received in convertible foreign exchange, and
- supplier and recipient are not merely establishments of a distinct person.

All B2C invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores will have a Dynamic QR code.

However, no Dynamic QR code is required in case of exports.

In the given case, although the aggregate turnover of Sunita Industries exceeds Rs. 500 crore in preceding FY 2022-23, it is still not mandatorily required to have a Dynamic QR code requirement on the invoice for said services as Dynamic QR code requirement is not applicable to exports.

ALTERNATIVE-II

Where it is assumed that the machinery is exported after being put to use in India:

The place of supply of the services supplied which are required to be made physically available by the recipient to the supplier for repairs and are exported after such repairs if put to any use in India where supplier is in India and recipient is located outside India, is the location where goods are situated at the time of supply of services.

Thus, place of supply of repair services provided to Titen Ltd. in the given case is Gujarat.

All B2C invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores will have a Dynamic QR code.

However, in cases, where an invoice is issued to recipient outside India, for supply of services, for which place of supply is in India and the payment is received by supplier, in convertible FOREX, such invoice may be issued without having a Dynamic QR Code.

In the given case, although the aggregate turnover of Sunita Industries exceeds Rs. 500 crore in preceding FY 2022-23, it is still not mandatorily required to have a Dynamic QR code requirement on the invoice for said services.

10 ACCOUNTS & RECORDS E-WAY BILL

Theory

1. When is an e-way bill required to be generated? (PAST EXAM MAY 2019) (MTP JULY 2021) (MTP MAY 2020)

Answer:

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.

2. 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. (PAST EXAM MAY 2019)

Answer:

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.

3. Whether the transporters, who are not registered under the GST, are required to maintain any records under the provisions of CGST Act, 2017? Also explain, if any other unregistered persons who are required to maintain records under GST. (PAST EXAM JAN 2021)

Answer:

The transporters, who are not registered under GST, shall obtain a unique enrollment number on GST common portal and maintain records of goods transported, delivered and goods stored in transit by them along with GSTIN of the registered consignor and consignee for each of his branches. Every owner or operator of warehouse/godown/any other place used for storage of goods, even if unregistered, is also required to maintain records under GST.

4. List any four records required to be maintained by an agent under the CGST Rules, 2017. (4 Marks Dec '21)

Answer:

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.

Practical Theory

5. 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).

Answer:

Rule 56(11) 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.

6. Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of Rs. 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? (RTP MAY 2019)

Answer:

(a) Rule 138(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 Rs. 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:

= Rs. 48,000 × 118%

= Rs. 56,640.

Since the movement of goods is in relation to supply of goods and the consignment value exceeds Rs. 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 Rs. 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 Rs. 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 Rs. 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 Rs. 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.

7. 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 Rs. 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. (RTP MAY 2019) (MTP JULY 2021)

Answer:

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 Rs. 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 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 Rs. 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.

8. Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth Rs. 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 Rs. 55,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth Rs. 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). (RTP MAY 2019)

Answer:

Beauty Cosmetics Ltd. would be required to prepare two separate e- way bills since each invoice value exceeds Rs. 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.

9. M/s. ABC Manufacturers, registered in West Bengal, sold air-conditioner to a retail seller in Bhubaneswar, at a value of Rs. 49,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of air- conditioning machine to the retail seller in Bhubaneswar. You are required to advise M/s. ABC Manufacturers on the following issues along with suitable explanations:

(i) Whether e-way bill is mandatorily required to be generated?

(ii) What will be the consequence for non-issuance of e-way bill? (PAST EXAM JAN 2021)

Answer:

(i) E-way bill is mandatorily required to be generated whenever there is a movement of goods of consignment value exceeding Rs. 50,000, inter alia, in relation to a supply. Consignment value of goods includes the central tax, State/Union territory tax, integrated tax and cess charged, if any.

Thus, the consignment value of goods, in the given case, will be Rs. 57,820 [Rs. 49,000 + (Rs. 49,000 ×18%)].

Since in the given case the movement of goods is in relation to supply of goods and the consignment value exceeds Rs. 50,000, e- way bill is mandatorily required to be generated in respect of movement of goods from West Bengal to Bhubaneswar.

(ii) Non-issuance of e-way bill may result in the following consequences:

(a) imposition of penalty of Rs. 10,000/- or tax sought to be evaded (wherever applicable), whichever is greater

(b) detention and seizure of goods and the conveyance used to transport the said goods and the same will be released only on payment of appropriate tax and penalty

(c) confiscation of goods and the conveyance used to transport the said goods if the tax and penalty is not paid within 14 days of detention or seizure

10. Comment on the given independent situations relating to GST procedures. Your answer should include relevant provisions of law, as may be applicable:

Go To Dress is a chain of stores dealing in readymade garments through five showrooms in Delhi. It has a single GSTIN for all its showrooms in Delhi and has a principal place of business at Karol Bagh, Delhi. One of the consultants has suggested GoToDress to maintain books of accounts of all of its five showrooms at principal place of business at Karol Bagh, Delhi for better administration and control.

Give your comment on the above advice according to the provisions of GST law. (2 Marks May '22)

Answer:

The suggestion of the consultant is not correct.

Every registered person is required to keep and maintain, his books of accounts at his principal place of business.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

11. Decide with reason whether e-way bill is required to be issued under CGST Act, 2017 in the following independent cases:

A. SV Electricals Ltd., a registered supplier of electronic goods, is required to send from Delhi, a consignment of parts of LED TV to be replaced under warranty at various client locations in Gurugram (Haryana). The value of consignment declared in delivery challan accompanying the goods is Rs. 65,000. SV Electricals Ltd. claims that since movement of goods to Gurugram (Haryana) 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 SV Electricals Ltd.

B. Tree Ltd. registered in Kerala, sends goods to its job worker Woods & Co. in Tamil Nadu, which is also registered under GST. Value of the consignment was Rs. 37,500 (including GST). (MAY 2023)(4 Marks)

Answer:

A. The claim made by SV Electricals Ltd. is not correct. SV Electricals Ltd. needs to issue e-way bill.

E-way bill is mandatorily required to be issued whenever there is a movement of goods for reasons other than supply, provided the consignment value exceeds Rs. 50,000.

B. In case of inter-State transfer of goods by principal to job-worker, e-way bill is mandatorily required to be issued irrespective of the value of the consignment.

Thus, e-way bill is required to be issued in case of transfer of goods by Tree Ltd. Registered in Kerala to Woods & Co. in Tamil Nadu.

12. M/s Cute and Co., a registered person under GST, filed an appeal with respect to denial of Input Tax Credit (ITC) related to the financial year 2017-18. This appeal was disposed of in favour of M/s Cute and Co. on 30-09-2022. Annual return for the financial year 2017-18 was filed by it on 31-03-2020. Due date for the said return was 07-02-2020.

    Cute and Co. seeks your advice with reason regarding the time-line upto which they are supposed to retain the books of accounts and other records as per the provisions of the CGST Act, 2017.

    (NOV 2023) (4 Marks)

Answer:

M/s Cute & Co. who is a party to an appeal is required to retain the books of accounts and other records:

(i) for a period of 1 year after final disposal of such appeal (i.e., 30.09.2023), or

(ii) for 72 months from the due date of furnishing of annual return for the financial year 2017-18 (07.02.2026), whichever is later.

Thus, M/s Cute & Co. needs to maintain books of accounts till 07.02.2026.

13. Manu Services Ltd. is a supplier of management consultancy services registered in Haryana. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained? (5 Marks) (MTP Nov 2023)

Answer

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) 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..

14. Essel Groups has started making taxable supplies and gets registered under GST law. You are required to advice t about the accounts and records required to be maintained by it as required under section 35(1). (5 Marks) (MTP Nov. 2023)

Answer

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.

11 PAYMENT

Multiple Choice Questions

1. Sachi Traders, registered in Maharashtra, purchased machinery two years back worth ₹ 2,00,00,000 and did not avail ITC on said machinery at the time of its purchase. After using the machinery for two years, it gave said machinery free of cost in the month of September (in the current year) to an unrelated person in Punjab. On the date of transfer, open market value of the machinery was ₹ 1,25,00,000 and the written down value was ₹ 1,53,00,530.

   In the month of September, it also supplied taxable goods worth ₹ 50,00,000 to Hike Oil Corporation Limited in the territorial waters. The said territorial waters are located at a distance of 5 nautical miles from the baseline of the State of Maharashtra and 7 nautical miles from the baseline of the State of Kerala. All above amounts are exclusive of GST and rates of applicable CGST, SGST and IGST in above cases are 9%, 9% and 18%.

   You are required to determine the amount of net CGST and SGST and/or IGST payable in the month of September.

   (a) CGST: ₹ 4,50,000; SGST: ₹ 4,50,000; IGST: Nil

   (b) CGST: Nil; SGST: Nil; IGST: ₹ 9,00,000

   (c) CGST: Nil; SGST: Nil; IGST: Nil(d)

   (d) CGST: ₹ 4,50,000; SGST: ₹ 4,50,000; IGST: ₹ 22,50,000

   (2 Marks MTP March 22)

Answer: (a)

Practical Theory

2. ABC limited filed the return for GST under section 39(1) for the month of November on 20thDecember 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.

Answer:

As per section 2(117), "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.

3. Ms PPC & Co. have availed input tax credit of Rs. 42,500/- during September under IGST head, instead of availing Rs. 21,250 under CGST & SGST heads. Mr. X, accountant of the above entity would like to use Form GST PMT-09 for making a transfer from IGST head to respective CGST & SGST heads. Examine the scenario and offer your comments.

Answer:

As per provisions of section 49(10) read with rule 87(13) of CGST Rules, 2017, "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09". It is important to note that only amounts available under Electronic Cash Ledger can be transferred to the respective heads using Form GST PMT-09 and not otherwise. Accordingly, contention of the Accountant Mr. X of M/s PPC & Co., is not valid for transfer of Rs. 42,500 from head IGST to respective CGST & SGST in Electronic Credit Ledger.

4. M/s Neptune & Co. is registered under GST in the state of Maharashtra. They have made zero-rated supply of goods worth Rs. 84,50,000/- on payment of IGST for Rs. 10,14,000/- during the month of May. The refund application under section 54 for the above supply has been rejected by the proper officer.

   Mr. A, taxation manager of the firm, has sought for recrediting the Electronic Credit Ledger as per the provisions of rule 86 for the above rejection. Examine the scenario and offer your comments.

Answer:

Rule 86 of CGST Rules provides that where a registered person has claimed refund of any unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Neptune & Co., have made zero-rated supply with payment of IGST for Rs. 10,14,000/- and the refund for the same has been rejected by the proper officer. Therefore, contention of Mr. A is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub- rule (3) of Rule 86 towards "refund of any unutilized amount".

Supply made during May by M/s Neptune & Co. is on payment of IGST and therefore provisions laid out in sub-rule (4) of Rule 86 shall not be applicable.

5. (i) A Central Government Department located at Uttar Pradesh is registered with the Commercial Tax Department UP State for deducting GST. It enters into a contract with a Public Sector Undertaking (PSU), registered under GST in the State of Delhi, for supplying goods valued ₹ 3,50,000. The PSU argues that no tax is deductible on this supply by the Central Government Department as it is located outside the State of Uttar Pradesh and therefore not liable to tax under CGST and SGST as it is a local levy and IGST tax deduction is not applicable if it is located in another State, other than the State in which the Department is registered. You are required to comment on this.

   (ii) Would there be any difference, if instead of the PSU if it was an entity in the private sector? Applicable tax rate for deduction is 1% CGST, 1% SGST and 2% IGST.

   (iii) If the private sector entity undertakes works contract, for the above Department in New Delhi. What would be the position of tax deduction when the contract value is ₹ 5,00,000?

   (iv) The disbursing officer has not paid the tax deducted in the month of February 2026, amounting to ₹ 2,00,000 under CGST and 2,00,000 under SGST to the Government's account on the relevant due date, but has paid it on 14th May, 2026. Further, return for that month is also filed on that date and the certificate is also issued simultaneously. What are the consequences, on such failures, to the disbursing officer under the GST law? (PAST EXAM NOV 2020)

Answer:

(i) Certain specified persons are required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000.

(ii) However, the tax is not liable to be deducted at source when supply of goods and/or services has taken place between one specified person to another specified person. Since both Central Government Department and PSU are the specified persons, tax is not deductible in case of supply of goods between them.

(iii) Central Government Department is mandatorily required to deduct IGST @ 2% since a private entity is not the specified person.

(iv) Since, in the given case, the location of supplier and place of supply is in the same State, i.e., Delhi and location of recipient is in

UP, Central Government Department is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000. [It has been assumed that the location of private entity and the place of supply are in Delhi and the Central Government Department is in U.P.]

(v) Failure to deposit TDS with the Government and failure to furnish TDS return within the stipulated time period will result in following consequences:

A. Interest @ 18% p.a. on the amount of tax deducted shall be payable.

B. Late fee of ₹ 100(50 CGST+ 50 SGST) per day for the period of delay in furnishing return, or ₹ 2,000, whichever is lower, shall be payable. Equal amount of late fee will be payable under

C. Applicable penalty will also be levied.

6. From the following information of independent cases, your expert advice, with appropriate reasoning, is on the applicability of TDS/TCS provisions of the CGST Act, 2017. You shall also quantify the amount of TDS/TCS, as the case be, if the same is applicable.

(i) Top Fashions, a designer cloth dealer and registered in the State of West Bengal, effected supply through 'QUICK DEAL', an electronic commerce operator. Net value of taxable intra-State supplies effected for the month of October 2025 was ₹ 1,50,000.

(ii) M/s Super Builders, a registered supplier in Tamil Nadu, was awarded a works contract by Government of Tamil Nadu amounting to ₹ 4,30,000. Of this, value of exempt supply was ₹ 1,00,000.

(iii) Tasty Caterers, a registered supplier of Kerala, provided catering services in Kochi, Kerala to Government of Andhra Pradesh for its annual training camp held for its staff. Value of said services was ₹ 4,50,000. (PAST EXAM JAN 2021)

Answer:

(i) An electronic commerce operator (ECO) is required to collect TCS - an amount @ 0.50% (CGST 0.25% and SGST @ 0.25%) of the net value of taxable supplies made through it by other suppliers.

= ₹ 1,50,000 × 0.25%

= ₹ 375 (CGST) & ₹ 375 (SGST)

(ii) A State Government is required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000. TDS to be deducted in the given intra-State supply (since place of supply and location of supplier is in Tamil Nadu) is as follows:

= ₹ (4,30,000 - 1,00,000) × 1% = ₹ 3,300 (CGST) ₹ 3,300 (SGST)

(iii) Since, in the given case, the location of supplier and place of supply are in the same State, i.e., Kerala and location of recipient is in Andhra Pradesh, Andhra Pradesh Government is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000.

Note:In above question, it has been assumed that the value given is exclusive of GST, wherever applicable, since the rate of tax is not given in the question.

7. M/s Nose Ltd reduced the amount of Rs. 2,25,000 from the output tax liability in contravention of the provisions of section 42(10) of the CGST Act, 2017 in the month of January 2025 (vide invoice date 12.01.2025), which is ineligible credit at invoice level. As a result a show cause notice issued Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s Nose Ltd paid the tax and interest on 5th March 2025. Find the interest liability if any?

Note: ignore the penalty

Answer:

As per section 42(10) read with section 50(3) of the CGST Act, 2017 amount reduced from the output tax liability in contravention of the provisions of section 42(7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in section 50(3) of the CGST Act, 2017.

Therefore, applicable rate of interest is @18% per annum. January month return due date is 20th of February 2022. Interest = Rs. 1,442/- (2,25,000 x 24% x 13/365)

Note: from 21st February 2025 to 5th March 2025 = 13 days

8. BSA Corporation is a Public Sector Undertaking registered in Karnataka. For entertainment events in Bengaluru and at Mumbai, BSA has given contract to Mr. A, a renowned artist, registered person in Maharashtra, to perform on contemporary Bollywood songs. BSA Corporation agreed to pay ₹ 12,39,000 and ₹ 18,29,000, inclusive of GST, for Mumbai and Bengaluru events respectively. BSA Corporation seeks your advice regarding amount of TDS to be deducted assuming GST rate @ 18% (CGST @ 9%, SGST @ 9%, IGST @18%)(5 Marks PP Nov 22)

Answer:

A Public Sector Undertaking is required to deduct tax @ 2% (on inter-State supplies) from payment made to the supplier of taxable services where the total value of such supply, excluding tax indicated in the invoice, under a contract, exceeds ₹ 2,50,000. Value of supplies excluding tax are

₹ 10,50,000 (₹ 12,39,000 × 100/118) and

₹ 15,50,000 (₹ 18,39,000 × 100/118)

Further, in the given case, since the location of supplier is Maharashtra and place of supply of services provided by Mr. A to BSA Corporation is the location of recipient, viz. Karnataka, said services provided at both Mumbai and Bengaluru events are inter

-State supplies.

Accordingly, in the given case, BSA Corporation is required to deduct tax as follows:

(i) ₹ 10,50,000 × 2% = ₹ 21,000 (IGST)

(ii) ₹ 15,50,000 × 2% = ₹ 31,000 (IGST)

Number Based Questions

9. Miss Nitya has following balances in her Electronic Cash Ledger as on 28th February as per GST portal.

Major Heads	Minor Heads	Amount
CGST	Tax	40,000
	Interest	1000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000

	Interest	200
	Penalty	Nil

Her tax liability for the month of February for CGST and SGST was Rs. 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12th April 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 20th April.

Other information:-

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

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

(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. (PAST EXAM NOV 2018)

Answer:

Due date for payment of tax collected on 18th February is 20th March. 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 20th April, no interest will be payable since the amount available in Electronic Cash Ledger on or before the due date till the date of actual payment is reduced from the amount on which interest is payable under S.50.

As per Section 49(10) of the CGST Act, 2017, any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act, 2017 can be transferred to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed. Thus, amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be transferred to any other major or minor head. Consequently, cross- utilization among Major and Minor heads is also 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	Nil	75,000	Nil
Balances in Electronic cash ledger in same major/minor head	40,000	Nil	80,000	Nil
Balances transferred from other major/minor head	35,000 (Note 1)	Nil	Nil	Nil
Amount payable in cash	Nil	Nil	Nil	Nil

Note 1 – Rs. 35,000 shortfall amount has been transferred from cash ledger balance available in Major Head IGST.

Since there is no restriction in intra-head or inter-head transfer of available balance in cash ledger as per the relevant provisions, it is upon the taxpayer to decide from which account the shortfall has to be made good..

10. A makes intra-State supply of goods valued at Rs. 50,000 to B within State of Karnataka. There is no input tax credit

balance available with A. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin on the value of goods excluding taxes. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin on the value of goods excluding taxes.

Assume that the rate of GST chargeable is 18% (CGST and SGST at 9% each and IGST chargeable at 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.

Answer:

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

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

Computation of IGST payable by B 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 Rs. 4,500 utilised in the payment of IGST to the Central Government.

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

Value charged for supply of goods (Rs. 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

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

Credit of IGST can be used to pay IGST, CGST and SGST in any order and in any proportion. Central Government will transfer IGST of Rs. 4,455 utilised in the payment of SGST to Telangana Government

11. M/s ABC Ltd. have belatedly filed GST return (under section 39) for the month of January after 60 days from the due date

for filing such return. Total tax paid in such return is as below:

Particulars	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Output tax payable	4,50,000	2,85,000	2,85,000
Tax payable under reverse charge	18,000	32,000	32,000
Input tax available for utilisation	2,50,000	55,000	55,000
Tax paid through Electronic Cash Ledger	2,18,000	2,62,000	2,62,000

Examine the interest payable as per the provisions of GST law.

What would be your answer, if entire tax for the month of January has to be paid through Electronic Credit Ledger except taxes to be paid on reverse charge basis?

Answer:

Proviso to section 50 lays down that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger. In the given scenario, M/s ABC Ltd. have filed their return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

IGST: 218,000 *18%*60/365 = 6,450 CGST: 262,000*18%*60/365 = 7,752 SGST: 262,000*18%*60/365 = 7,752

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

IGST: 18,000 * 18% * 60/365 = 532

CGST: 32,000 * 18% * 60/365 = 946

SGST: 32,000 * 18% * 60/365 = 946

12. Examine the taxes to be paid for the month of July on the basis of below information furnished by M/s Zinc & Co.

Particulars	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Output tax payable	14,75,000	28,34,000	28,34,000
Tax payable under reverse charge	36,000	1,44,000	1,44,000
Balance in Electronic Credit Ledger	26,52,000	18,32,000	18,32,000

Output tax reported under IGST column pertains to the month of February, which was not paid for the said period. Also, note that input tax credit available in Electronic Credit Ledger pertains to input tax on purchases made during the month of July and no opening balance exists from previous tax period.

Answer:

Payment of taxes is governed as per the provisions laid in section 49 read with section 49A and 49B of CGST Act, 2017 along with rule 88A of CGST Rules, 2017 Also, section 49(8) of CGST Act, stipulates that every taxable person shall discharge his tax and other dues

under this Act or the rules made thereunder in the following order, namely:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;"

As per the above provisions, self-assessed tax of previous tax period

i.e. February shall be paid first and later self-assessed tax of current tax period i.e. July shall be paid.

Payment of taxes under forward charge

Particulars	IGST	CGST	SGST
Balance in electronic creditledger for utilization	26,52,000	18,32,000	18,32,000
Output tax payable for July	14,75,000	28,34,000	28,34,000
Less: Utilization of input tax credit:			
a. IGST [Refer Note1]	14,75,000	5,88,500	5,88,500
b. CGST	0	18,32,000	0
c. SGST	0	0	18,32,000
Amount payable through electronic cash ledger	Nil	4,13,500	4,13,500
Total amount payable through electronic cash ledger			
Particulars	IGST	CGST	SGST
Amount payable through Electronic cash ledger under forward charge	Nil	4,13,500	4,13,500
Amount payable through electronic cash	36,000	1,44,000	1,44,000
ledger under reverse charge [Refer Note-2]			
Total amount payable through electronic cash ledger	36,000	5,57,500	557,500

Notes:-

1) After utilization of IGST credit towards output IGST liability, balance has been utilized equally amongst CGST & SGST

2) Input tax credit cannot be utilized for discharging tax liability under reverse charge basis, thus payable vide electronic cash ledger.

Since, M/s Zinc & Co., have defaulted in payment of taxes for the month of February and the same has been paid during July, interest is payable as per the provisions of section 50 of the CGST Act, 2017

13. 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. 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, respectively as under:

S. No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October

			(₹)
(i)	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
(ii)	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

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?

(4 Marks April '23)

Answer:

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

Tax to be deducted						
S.No.	Particulars	Total Contract Value (Rs.)	Payment due (Rs.)	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
(i)	Interior decoration of Andhra Bhawan located in Delhi (Note-1)	12,39,000	12,39,000			
(ii)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-2)	9,72,000				

Notes:

1. 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. 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.

2. 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 x 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.

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.

14. 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. 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 as under:

S.No.	Particulars	Total contract value (inclusive of GST) (Rs.)	Payment due in October (Rs.)
(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 Rs. 9,72,000, contract value for supply of books (exempt from GST) is Rs. 7,00,000 and for supply of printed post cards (taxable under GST) is Rs. 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? (RTP MAY 2019)

Answer:

As per section 51 read with section 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 Rs. 2,50,000:

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

(a) local authority; or

(b) Governmental agencies; or

(c) 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

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

(e) 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, 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 (Rs.)	Payment due (Rs.)	Tax to be deducted		
				CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000		--	
	(Note-1)					
(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	12,39,000	12,39,000			

	located in Delhi (Note- 5)					
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:

   = Rs. 2,60,000 × 100 / 118

   = Rs. 2,20,339 (rounded off)

   Since the total value of supply under the contract does not exceed Rs. 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:

   = Rs. 2,95,000 × 100 / 118

   = Rs. 2,50,000

   Since the total value of supply under the contract does not exceed Rs. 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:

   = Rs. 5,90,000× 100 / 118

   = Rs. 5,00,000

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

   = Rs. 6,49,000× 100 / 118

   = Rs. 5,50,000

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

= Rs. 2,72,000× 100 / 118

= Rs. 2,30,509 (rounded off)

Since the total value of taxable supply under the contract does not exceed Rs. 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.

15. Y Ltd is operating in two states Andhra Pradesh and Tamil Nadu. The tax liability for the month of August 20XX is as follows—

Tax Liability	Andhra Pradesh (Rs)	Tamil Nadu (Rs)
Output CGST Payable	25,000	10,000
Output SGST Payable	10,000	5,000
Output IGST payable	3,000	2,500
Input CGST	8,000	13,000
Input SGST	15,000	1,500
Input IGST	12,000	16,000

Calculate the tax payable for the month of August 20XX.

Answer:

Net Tax Payable for the Month of August is as follows:-

Particulars	Andhra Pradesh			Tamil Nadu		
	CGST	SGST	IGST	CGST	SGST	IGST
Output tax	25,000	10,000	3,000	10,000	5,000	2,500
Less: ITC of IGST	(9,000)	Nil	(3,000)	(8,500)	(5,000)	(2,500)
Out tax after adjustment of IGST ITC	16,000	10,000	Nil	1,500	Nil	Nil
Less: ITC of CGST & SGST	(8,000)	(15,000)	Nil	(13,000)	(1,500)	Nil
Net tax payable by E- cash ledger	8,000	Nil	Nil	Nil	Nil	Nil
Input credit carry forwarded to next month	-	5,000	-	(11,500)	(1,500)	Nil

Notes:

1) IGST Input tax credit should be adjusted against Output tax of liability of IGST. Excess of IGST credit after payment of IGST can be adjusted against payment of CGST or SGST/UTGST in any proportion as decided by the assessee.
2) SGST Input tax credit cannot be adjusted against output CGST & Vice- Versa.
3) CGST & SGST Input tax credit of one State cannot be adjusted against Output CGST & SGST of other state (same principle is applicable to IGST credit also).

16. Mr. A has output Tax Liability of Rs. 1,00,000/- towards CGST & SGST/UGST and Rs. 20,000 towards IGST and also interest payable of Rs. 1800/-. Explain the manner of discharge tax liability by Mr. A in the following two independent cases:

(i) Input tax credit available of CGST & SGST is Rs. 25,000/- each & IGST is Rs. 25,000/-

(ii) Input tax credit not available.

Answer:

Case 1:

In case Input Tax credit available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	52,000	20,000	1,800	1,21,800
Electronic credit ledger	Input Tax Credit	25,000	25,000	25,000	-	75,000
	Net output tax liability	25,000	25,000	-	-	50,000
	IGST Credit set off	5000 (Note-1)	-	-	-	5,000
Electronic cash ledger	Cash to be deposited	20,000	25,000	-	1800 (Note-2)	46,800

Note

1) IGST Credit can be adjusted against CGST or SGST in any proportion.
2) Interest cannot be adjusted with Input Tax credit

Case 2:

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic Cash ledger	Amount to be deposited	50,000	50,000	20,000	1,800	1,21,800

17. X Ltd has following tax liabilities under the provisions of Act-

S.No	Particulars	Amount (Rs.)
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2025	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2025	20,000

3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2025	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2025	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2025	8,00,000
6.	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd has Rs. 5,00,000 in Electronic cash ledger. Suggest X Ltd in discharging the tax liability.

Answer:

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd-

Particulars	Amount
Balance available in Electronic cash ledger	5,00,000
Less-	
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2025	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2025	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2025	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2025	(20,000)
Demand raised as per section 73 or section 74 UNDER CGST Act, 2017	(2,40,000)
Balance in electronic cash ledger	Nil
The balance amount of Rs. 5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.	

18. M/s Rajendra Dyeing Pvt. Ltd. supplied goods worth Rs. 10,00,000 to M/s Y Ltd in the month of September, 2025 plus GST 12%. M/s Rajendra Dyeing Pvt. Ltd. paid the GST on 5th December 2026 and filed 3B. The amount of input tax credit is 70,000 is available in the books. Calculation of interest payment if any under section 50 of the CGST Act, 2017.

Answer:

Tax = Rs. 1,20,000 Less: ITC = Rs. (70,000)

Tax payable = Rs. 50,000

Interest shall be calculated from the next day of the due date of payment from 21st October 2025 to the actual date of payment i.e. 5th December 2026.

Interest is Rs. 50,000 ×18% ×411/365 = Rs. 10,134/-

19. Parekh 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. 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, respectively as under:

S. No.	Particulars	Total contract value (inclusive of	Payment due in October
(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 & registered in Uttarakhand	5,90,000	25,000

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. (4 Marks MTP Oct 22)

Answer:

As per section 51 read with section 20 of the IGST Act, 2017 and *Notification No. 50/2018 CT 13.09.2018,* 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:

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

(ii) local authority; or

(iii) Governmental agencies; or

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

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

(b) established by any Government, with 51% or more participation by way of equity or control, to carry out any function; or

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

(vi) 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, Parekh Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under

section 51 , 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,	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	5,90,000	25,000			500

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.

20. Ragini Traders, 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 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 31st October. The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

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

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

(iii) Supply of generator renting service to Municipal Corporation of Jaipur (not exempt under GST law). Total contract value is ₹ 3,50,000 (inclusive of GST) (4 Marks MTP March '23)

Answer:

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, Ragini Traders 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	2,42,857 [2,72,000 × 100 / 112]	--	--	

	[excluding IGST (being inter-State supply)] does not exceed ₹ 2,50,000, tax is not required to be deducted.]				
(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**	**5,100**

21. Agni Limited filed GST return (under section 39) for the month of January 2021 on 11th April 2025.

Original due date for the said return was 20th February 2025. Details of tax assessed as payable for the said month are given below:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000
Tax payable under reverse	40,000	40,000
Input tax credit available for	70,000	70,000

(i) Compute the net tax payable in cash while filing the said return as well as the interest payable for the delayed remittance of tax.

(ii) Assuming that the company has an ITC balance of ₹ 2,50,000 each under CGST and SGST for the said month, compute the interest payable, if entire tax due for the said month was paid through the Electronic Credit Ledger to the extent possible as per the provisions of Act. (5 Marks PP May '22)

Answer:

.(i) Interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date shall be levied only on tax paid through electronic cash ledger.

In the given case, since return is filed belatedly, net tax payable in cash and interest thereon is computed as follows:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000
Less: Credit of CGST and SGST be utilized for payment of CGST	70,000	70,000
Net tax (A)	1,10,000	1,10,000
Tax under reverse charge is payable	40,000	40,000
Total tax payable in cash [(A) + (B)]	1,50,000	1,50,000
Interest payable @ 18% per annum	3,699	3,699
(rounded off)	[1,50,000 ×	[1,50,000 ×

	18% ×	18% ×

(ii) In the above case, if ITC available is ₹ 2,50,000 of CGST and SGST each, output tax payable in cash shall be nil (CGST as well as SGST). However, remaining ITC available cannot be utilised for payment of tax payable under reverse charge as it is not an output tax. Therefore, interest on delayed payment of tax will be as follows:

Particulars	CGST (₹)	SGST (₹)
Interest payable @ 18%	986	986
per annum (rounded off)	[40,000 ×	[40,000 ×
	18%	18%

Other ICAI Module Questions

22. Can one use input tax credit for payment of interest, penalty or payment of GST under reverse charge?

Answer:

No, as per section 49(4) the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'. As per section 2(82), 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 or GST payment under reverse charge.

23. Mr. Broker wrongly availed Rs. 1,25,000 as input tax credit (CGST + SGST) at the time of furnishing return under section 39 of the CGST Act, 2017 for the month of October 2025. This ITC was not utilized against the output tax liability for the month of October 2025. Mr. Broker utilised ITC of Rs. 75,000 from the above wrongly availed ITC of Rs. 1,25,000 against output tax liability for the month of November 2025.

Mr. Broker paid the amount of ITC wrongly utilised of Rs. 75,000 on 10th March, 2026 and reversed the unutilized amount of Rs. 50,000 on 20th March 2026. Calculate the total interest payable (CGST + SGST) rounded off to nearest rupee under GST law if Mr. Broker files:

(i) Form GSTR-3B for the month of October on 18th November 2025, and (ii) Form GSTR-3B for the month of November on 25th December 2025.

Note: Assume there is no extension of due date of filing of Form GSTR-3B and no other transactions were undertaken during the year 2022-23.

(5 Marks) (NOV 2023)

Answer:

Where ITC has been wrongly availed and utilised, the registered person shall pay interest on the same.

- for the period starting from the date of utilisation of such wrongly availed ITC
- till the date of reversal of ITC or payment of tax in respect of such amount
- @ 18% per annum.

Since wrongly availed ITC of Rs. 50,000 has been reversed without utilizing the same, interest is not payable on the same.

Interest is payable on wrongly availed and utilised ITC of Rs. 75,000.

Date of utilisation of said ITC will be:

(a) Due date of furnishing return for November, 2025 [20th December, 2025] or

(b) Actual date of filing of the return for November [25th December, 2025] whichever is earlier.

Thus, date of utilisation of said ITC will be 20th December, 2025.

Interest (CGST + SGST) will be payable for 80 days [21st December 2025 to 10th March, 2026 (both days inclusive)] as follows:

Rs. 75,000 × 80/365 × 18%

= Rs. 2,959 [CGST+SGST] (rounded off)

24. List the instances when TDS is not liable to be deducted under the GST law. (4 Marks) (NOV 2023)

Answer:

Tax is not liable to be deducted at source under GST law when:

(i) Location of the supplier and the place of supply are in a State/ Union territory which is different from the State/ Union territory of registration of the recipient.

(ii) Goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person

(iii) Supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act, 2017, i.e.

  (a) Department/establishment of Central/State Government

  (b) Local authority

  (c) Governmental agencies

  (d) Notified persons or category of persons (Other than registered person supplying Metal Scrap)

(iv) Total value of taxable supply ≤ Rs. 2.5 lakh under a contract.

25. M/S MN Ltd has a balance of Rs. 30,000 as CGST and Rs. 30,000 SGST in the electronic credit ledger in the beginning of April 2024. During the month of April, 2024, M/S MN Ltd has following liabilities:-

Particulars	CGST (Rs.)	SGST (Rs.)
GST Payable on outward supplies	10,000	10,000
GST payable as a consequence of proceeding instituted under the provision of GST law	5,000	5,000
GST payable on reverse charge supplies	6,000	6,000
Interest for default in late filing of GSTR-3B	500	500
Penalty	500	500
TOTAL	22,000	22,000

There is no input tax credit for the month of April 2024.

M/S MN Ltd is of the view that since opening balance in the electronic credit ledger is sufficient to discharge the whole liability for the month of April 2024, it is not required to deposit any tax for the above month.

Explain with reasons whether the contention of M/S MN Ltd is correct in view of the applicable provisions of the CGST Act, 2017. If not, what would be the amount payable in cash for the month of April, 2024? Also discuss in brief, the relevant provision of GST law.

(5 marks) (NOV 2024)

Answer:

The electronic credit ledger can be used for making payment of only output tax which is the tax chargeable on taxable outward supply, but excludes tax payable on reverse charge mechanism. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the GST law.

Accordingly, electronic credit ledger can be used for any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the GST law.

Thus, in view of the above-mentioned provisions, the contention of MN Ltd. is not correct.

Computation of amount payable in cash is as under: -

Particulars	**CGST (Rs.)**	**SGST (Rs.)**
GST payable on outward supplies	10,000	10,000
GST payable as consequence of proceeding instituted under GST law	5,000	5,000
Total	15,000	15,000
Less: ITC in Electronic Credit ledger	(15,000)	(15,000)
Balance	Nil	Nil
Add: GST payable on reverse charge supplies	6,000	6,000
Add: Interest for default in late filing of GSTR-3B	500	500
Add: Penalty	500	500
Total amount payable in cash	**7,000**	**7,000**

12 E-COMMERCE OPERATOR

Theory

1. **Whether the rate of tax of 0.50% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?**

Answer:

The rate of TCS as notified under CGST Act is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 0.50%.

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

Answer:

Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply made through it is being collected by the ecommerce operator. However, no TCS is required to be collected in the following cases:-

(i) on supply of services notified under section 9(5) of the CGST Act, 2017.

(ii) on exempt supplies

(iii) on supplies on which the recipient is required to pay tax on reverse charge basis

(iv) on unregistered supplier supplying goods or services through ECO.

3. **If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?**

Answer:

No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through E- commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

4. **State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios -**
   (a) Fitan sells watch on its own through its own website
   (b) ABC limited who is dealer of Fitan brand sells watches through Slipkart, an electronic commerce operator

Answer:

Answers for both the scenarios is as follows:

As per Section 52, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of

(a) the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Hence, if the person sells on his own, provisions pertaining to tax collected at source (TCS) won't be applicable.

(b) If ABC limited who is dealer of Fitan brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.

5. **A is an e-commerce operator supplying goods through its electronic portal in capacity of an agent. The goods belong to B and the consideration for such supplies is received by A and remitted to B as per the contractual arrangement. A requires your help in arriving at the rate at which tax shall be collected from the amount which is received by it against the supplies?**

Answer:

As per Section 52(1) of the CGST Act, 2017, the TCS provisions are not applicable in cases where the ECO is an agent of the supplier. In the present case, A being an ECO is supplying goods through the electronic portal in capacity of an agent and hence the liability to collect tax as per Section 52 shall not arise in this case.

6. **X booked a Hotel in Udaipur, Rajasthan through an e-commerce portal for an amount of Rs. 25,000. As per the terms and conditions, the amount was payable at the hotel at the time of check in. Whether TCS provisions shall apply in the present case?**

Answer:

No, as per the provisions under Section 52 of the CGST Act, 2017 the TCS provisions shall trigger only when the ECO is receiving the consideration for supply from the recipient of supply. In the present case the supplier i.e. the hotel is directly receiving the consideration from the recipient of the services i.e. X. Hence, the present transactions shall not trigger the TCS provisions under Section 52.

7. **Mr. Sanjay of New Delhi made a request for a Motor cab to "Super ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. Sanjay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.**

"Super ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Super ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Super ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST under the provisions of Goods and Service tax laws.

With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case?

Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

Answer:

Section 5 of IGST Act, 2017 provides that tax on inter-State supplies of specified services notified by Government shall be paid by the electronic commerce operator (ECO) located in taxable territory if such services are supplied through it. Services by way of transportation of passengers by a motor cab supplied through ECO is one of the notified service.

Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for supply of goods or services or both, including digital products over digital or electronic network.

Since DT Ltd. owns and manages a mobile application to facilitate supply of passenger transportation service in motor cabs over a digital network, it is an ECO. Thus, DT Ltd., an ECO located in India is liable to pay GST in the given case.

However, where an ECO does not have a physical presence in the taxable territory, person representing ECO is liable to pay tax.

Further, where ECO has neither the physical presence nor any representative in the taxable territory, person appointed by the ECO for the purpose of paying the tax is liable to pay tax.

Accordingly, if D.T . Ltd. is located in New York (USA), any person representing DT Ltd. for any purpose in India is liable to pay tax.

Further, if D.T . Ltd. also does not have a representative in India, it shall appoint a person in India for the purpose of paying tax and such person shall be liable to pay tax.

8. **Suvidha Technologies is in the business of development of e- commerce platforms for various customers. Chennai Creations obtained the ownership rights of an e-commerce platform developed by Suvidha Technologies by paying a specified amount against ownership rights of said portal. Chennai Creations also entered into an annual maintenance contract with Suvidha Technologies for technical maintenance of the said portal. Chennai Creations supplies its own goods and services through the said portal to ultimate customers. Examine who is the e-commerce operator in the given case as per the provisions of the GST law.**

Answer:

As per section 2(44), electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network. Further, as per section 2(45), electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

In the given transaction, the e-commerce platform is developed by Suvidha Technologies. However, the ownership of the electronic platform is sold by Suvidha Technologies to Chennai Creations. Thus, Chennai Creations is the owner of the e-commerce platform and is also operating/managing the said platform for supply of its own goods and services. In view of the definition of e-commerce operator, it is Chennai Creations which owns, operates or manages digital or electronic facility or platform for electronic commerce. Suvidha Technologies is merely providing the annual management services for the electronic platform, but the ownership rights lie with Chennai Creations. Thus, Suvidha Technologies cannot be termed as electronic commerce operator in the given case and Chennai Creations is the e- commerce operator.

Practical Theory

9. **Starkart Limited owns and operates a web portal in the name of "Starkart" and is registered with the jurisdictional GST authorities in Delhi as an electronic commerce operator and is liable to collect tax at source under section 52. Starkart provides listing service to various sellers for selling the goods to ultimate customers. Besides this, Starkart also sells its own products through the same web portal. For the listing services provided to sellers, Starkart charges a listing fee at the rate of 10% of turnover of goods sold by the seller in a particular month. Such listing fee is recovered from the seller irrespective of any return of goods sold through Starkart. The customers can choose from wide range of goods listed on the web portal and place an online order for goods. The payment is made by the customers through the payment gateway in online mode only. At the time of monthly settlement, Starkart makes the payment to the sellers after adjusting the tax collection at source at the applicable rates. The invoice for goods sold on Starkart is issued by the seller in the name of customers and tax is charged on the basis of location of seller and customer. The goods are shipped directly by the seller to the customer and there is no responsibility of shipping the goods on Starkart for such third- party sellers. In case of return of goods by the customer, the shipping is arranged by Starkart. It charges a fee equivalent to 20% of the value of goods returned as cancellation charges and refunds the balance amount to the customer. Further, 10% of the value of goods returned is collected from the seller by Starkart as handling charges for return of goods. In the month of January, Pulkit, a resident of Rajasthan, purchased following goods from Starkart:**

(a) Laptop having a value of ₹ 50,000 and a printer having a value of ₹ 10,000. Both the products are sold by Infocom

Limited, a seller listed on Starkart and registered under GST in the State of Uttar Pradesh.

(b) Mobile phone having a value of ₹ 30,000 sold by Starkart in its own capacity. c. CCTV camera system having a value of ₹ 1,00,000 sold by Secure World, listed on Starkart and registered under GST in the State of Gujarat.

All the amounts given above are exclusive of GST, wherever applicable.

The opening balance of input tax credit for the relevant tax period for Starkart, Infocom Limited and Secure World is nil. Further, there is no other inward or outward supply transaction for Starkart, Infocom Limited and Secure World in January apart from the aforementioned transactions. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

GST is applicable on all inward and outward supplies at the following rates unless otherwise specified: CGST – 9%, SGST – 9%, IGST – 18%

Compute the net tax liability (including amount collected as TCS) of Starkart Limited and net GST payable in cash (after set- off of credits, if any) of Infocom Limited and Secure World, for the month of January.

Answer:

Computation of net tax liability (including amount collected as TCS) of Starkart Limited for January:

Particulars	₹
TCS to be collected from Infocom Limited on supply of Laptop and a printer to Pulkit [Starkart is an ECO since it owns and operates a web portal through which Infocom Limited supplies goods. Further, IGST is applicable on said inter-State transaction since supplier – Infocom Limited is located in the State of Uttar Pradesh and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 0.50% of [₹ 50,000 + ₹ 10,000]	300
GST to be paid by Starkart on supply of mobile phone made on its own account @ 18% (IGST) of ₹ 30,000. IGST is applicable on said inter-State transaction since supplier – Starkart is located in Delhi and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Since supply has been made by Starkart on its own account, no TCS needs to be collected.	5,400
TCS to be collected from Secure World on supply of CCTV camera system to Pulkit [ECO – Starkart is liable to collect TCS on this transaction. Further, IGST is applicable on said inter-State transaction since supplier – Secure World is located in the State of Gujarat and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 0.50% of ₹ 1,00,000]	500
Listing services provided by Starkart to Infocom Limited and Secure Limited @ 10% of turnover for the month of January. Turnover of Infocom Limited and Secure Limited is ₹ 60,000 and ₹ 1,00,000 respectively. IGST @ 18% on (₹ 1,60,000 × 10%) is applicable on said interState transaction since supplier – Starkart is located in Delhi and place of supply is Uttar Pradesh and Gujarat respectively [i.e. location of recipient in terms of section 12(2) of the IGST Act, 2017]	2,880
Total GST liability (including TCS) of Starkart for January	**9080**

Computation of net GST payable in cash by Infocom Limited for the month of January

Particulars	₹
Gross GST liability [18% of turnover for January (₹ 50,000 + ₹ 10,000)]	10,800
Less: ITC of GST payable on listing services received from [(10% of ₹ 60,000) ×18%]	(1,080)

Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(300)
Net GST payable in cash	9,420

Computation of net GST payable in cash by Secure World for the month of January

Gross GST Liability [18% of turnover for January (₹ 1,00,000)]	18,000
Less: ITC of GST payable on listing services received from [(10% of ₹ 1,00,000) ×18%]	(1,800)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(500)
Net GST payable in cash	**15,700**

10. Sumitra Nandan books a Hotel – Hillpoint Residency – via Zitcom Technologies Ltd. – an ECO – who in turn is integrated with another ECO-Techsuper Ltd. who has agreement with Hillpoint Residency. You are required to determine who is required to collected TCS in the given case.

Answer:

The given case is a case of multiple e-commerce model wherein a customer orders supplies via ECO-1 who in turn is integrated with ECO-2 who has agreement with the supplier. In this case, ECO-1 will not have any GST information of the supplier. TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

Thus, in the given case, TCS is to be collected by ECO-Techsuper Ltd. who is making payment to Hillpoint Residency for the supply happening through it,

11. Rajwada Operators Limited (ROL) is registered under GST in the State of Karnataka as an Electronic Commerce Operator (ECO). It owns and operates a web portal which supplies various goods and services on behalf of various sellers/service providers to its ultimate customers. Details of supplies undertaken through ROL in the month of October 2023 are as under:

(i) Sale of goods worth Rs. 1,47,500/- (including GST) by A Ltd., registered supplier of Rajasthan to B Ltd., Gujarat. Also, goods worth taxable value of Rs. 1,40,000/- sold by A Ltd., Rajasthan to B Ltd., Gujarat in the month of September 2023 were returned back in the month of October 2023.

(ii) Value of services provided from 21.10.23 to 30.10.23 by way of transportation of passengers by motor vehicles by X Ltd., registered under GST in Karnataka to Z Ltd., registered under GST in Karnataka amounting to Rs. 5,50,000/- (it includes Rs. 1,50,000/- against transportation services provided by omnibus).

(iii) Miss Zara of Mumbai books a room for 3 days and 2 nights in Raj Niwas Palace, Jodhpur, Rajasthan through Maharaja Resorts Ltd. (MRL), also an ECO registered under GST in Karnataka. MRL is integrated with ROL who has an agreement with Raj Niwas Palace. Raj Niwas Palace is registered under GST in Rajasthan and raises an invoice for Rs. 1,50,000/- to Miss Zara and receives Rs. 1,45,000/- from ROL for the same.

All the figures given above are exclusive of GST except wherever specified separately. Assume rate of CGST and SGST to be 9% each and IGST to be 18% on all inward and outward supplies of goods and services. Compute the amount of TCS to be collected by ROL for the month of October 2023.

Working notes should form part of your answer. (5 Marks) (MAY 2024)

Answer:

(i) ROL is liable to collect tax at source under section 52 of the CGST Act, 2017 @ 0.50% under IGST of the net value of inter-State taxable supplies of goods (Value of taxable supplies made less value of supplies returned) made through it by the electronic commerce operator (ECO) - A Ltd.

Net value of taxable supplies = Rs. 1,25,000 (Rs. 1,47,500× 100/118) - Rs. 1,40,000 = Nil / (Negative Value) Thus, TCS to be collected is Nil.

(ii) ROL is liable to collect TCS, since the tax on services, by way of transportation of passengers by an omnibus provided by a company through ECO, is not payable by ECO, under section 9(5) of the CGST Act, 2017.

= Rs. 1,50,000 × 0.25%

=Rs. 375 each under CGST and SGST

ROL is not required to collect TCS on transportation of passenger services by other motor vehicles supplied through it worth Rs. 4,00,000 as tax on the same is payable by ROL itself under section 9(5) of the CGST Act, 2017.

(iii) ROL, being supplier side ECO is liable to collect TCS @ 0.25% under CGST and 0.25% under SGST of the net value of intra-State taxable supplies of accommodation services made through it by Raj Niwas Palace.

= Rs. 1,50,000 × 0.25%

=Rs. 375 each under CGST and SGST

12. Mr. Jignesh of Delhi books accommodation, though an e-commerce operator - Plan My Trip Ltd. (PMTL), registered under GST in Uttarakhand, in a newly established budget hotel - Paras Resorts Ltd. (PRL) located in Nainital, Uttarakhand. The turnover of PRL in the current financial year is Rs. 18 lakh.

PRL raises an invoice for Rs. 1,00,000 to Mr. Jignesh. PMTL collects the payment from Mr. Jignesh and after deducting its fees and other charges from the same, remits the balance amount to PRL.

Advise PRL as to whether it is required to obtain GST registration. Also, whether tax is required to be collected at source by PMTL under section 52 on the services provided by PRL to Mr. Jignesh through electronic commerce operator - PMTL. If yes, determine the amount of tax to be collected at source.

Suppose in the above case, other facts remaining same, if PRL, supplying accommodation services, is also an e-commerce operator (registered in Uttarakhand as TCS collector as well as a regular tax payer since its aggregate turnover exceeds the threshold limit) and PMTL has an agreement with PRL for booking the accommodation at the time when Mr. Jignesh booked the accommodation, ascertain whether tax is required to be collected at source under section 52 on the services provided by PRL to Mr. Jignesh through electronic commerce operator - PMTL. If yes, determine the amount of tax to be collected at source and since two ecommerce operators are involved in the said transaction, who is required to collect the tax at source under section 52?

Note - Amounts given above are exclusive of GST. Assume applicable rate of CGST and SGST to be 9% each and IGST to be 18%.(RTP NOV 2024)

Answer:

As per section 22, 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, *inter alia*, provides that persons who supply goods or services or both through an electronic commerce operator (hereinafter referred as

ECO), who is required to collect tax at source under section 52, are required to obtain registration mandatorily. However, said mandatory registration is not applicable, *inter alia*, to the suppliers of the services which are notified under section 9(5) or section 5(5) of the IGST Act, 2017; such suppliers are entitled for threshold exemption.

In case where services are notified under section 5(5) of the IGST Act, 2017, the ECO is liable to pay the entire tax on behalf of the suppliers of services. *Notification No. 14/2017 IT (R) dated 28.06.2017* issued under said section notifies services by way of providing accommodation in hotels, provided the person supplying such service through ECO is not 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, PRL provides services by way of providing accommodation in hotel through an ECO. Services by way of providing accommodation in hotels provided by a supplier – PRL – which is not liable for registration under section 22(1) as its turnover is less than the threshold limit for registration, [viz. Rs. 20 lakh], is a service notified under section 5(5). Thus, PRL will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

As per section 52, ECO is not required to collect tax at source (TCS) in cases where the service is notified under section 9(5) of the CGST Act, 2017/section 5(5) of the IGST Act, 2017. The applicable tax on such services is to be paid by the ECO as if he is the supplier liable to pay tax on the supply of such services.

Thus, in the given case, no tax is required to be collected at source under section 52. Further, the supply of accommodation services by PRL to Mr. Jignesh is an intra-State supply liable to CGST and SGST since the place of supply of services by way of lodging accommodation by a hotel is the location at which the immovable property is located in terms of section 12(3) of the IGST Act, 2017. Accordingly, in the given case, place of supply is Uttarakhand and location of supplier – PRL – is also Uttarakhand.

As discussed above, entire tax of Rs. 9,000 (each under CGST and SGST) on Rs. 1,00,000 will be paid by the ECO – PMTL.

In case where PRL is registered under GST, service by way of providing accommodation in hotels provided by it through ECO will no longer be a service notified under section 5(5). The reason for the same is that services by way of providing accommodation in hotels are notified under section 5(5) only where the person supplying such service through ECO is not liable for registration under section 22(1). Consequently, said services shall be subject to the TCS provisions under section 52.

Further, in a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the supplier-side ECO is himself the supplier of the said supply, *Circular No. 194/06/2023 GST dated 17.07.2023* clarifies that the buyerside ECO will be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 and also make other compliances under said section.

As discussed above, the supply of accommodation services by PRL to Mr. Jignesh is an intra-State supply liable to CGST and SGST.

Accordingly, in the given case, buyer side ECO – PMTL – is required to collect TCS on Rs. 1,00,000 @ 0.25% each under CGST and SGST as follows:

= Rs. 1,00,000 × 0.25%

=Rs. 250 each under CGST and SGST

13 RETURNS

Theory

1. Answer the following questions elaborating the relevant provisions of section 44:

(a) Who is required to furnish the annual return and what is the due date for furnishing the same?

(b) What is the prescribed form for furnishing annual return/statement?

(c) Who is required to furnish a self-certified reconciliation statement? (May 23)

Answer:

(a) All registered persons whose aggregate turnover in the preceding financial year>=2 Crores are required to file an annual return. However, following persons are not required to file annual return:

(i) Casual taxable persons

(ii) Non-resident taxable person

(iii) Input service distributors

(iv) Person Opted for Composition Levy Scheme

(v) OIDAR Service provider outside India/Online money gaming supplier outside India

(i) Persons authorized to deduct/collect tax at source under section 51/52.

The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section. The department of the Central/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, are exempt from the requirement of furnishing an annual return including self-certified reconciliation statement.

The annual return for a financial year needs to be filed by 31 st December of the next financial year.

(b) The annual return is to be filed electronically in Form GSTR-9 through the common portal.

Further, an ECO required to collect tax at source is required to file an annual statement referred to in section 52(5) in Form GSTR-9B (yet to be notified). The statement for a financial year needs to be filed by 31st December of the next financial year.

(c) All registered persons are required to file furnish a self-certified reconciliation statement along with annual return if their aggregate turnover during a financial year exceeds ₹ 5 crores. Such registered persons should furnish, electronically, the annual return along with a copy of self-certified reconciliation statement, duly certified, in Form GSTR-9C. A Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.

However, following persons are not required to file self-certified reconciliation statement:

a. Casual taxable persons

b. Non-resident taxable person

c. Input service distributors

d. Persons authorized to deduct/collect tax at source under section 51/52, and

e. Taxpayers under Composition scheme

f. Government Departments

g. ODIAR outside India/Online Money Gaming outside India

h. Taxpayers with total turnover less than or equal to 5 cr.

Practical Theory

2. **Mr. Anand Kumar, a regular taxpayer, filed GSTR-1 for the month of August before the due date. Later, in the month of February next year, he discovers error in the GSTR-1 of the month of August already filed and wants to revise it.**

   You are required to advise him on the future course of action in this scenario. (PAST EXAM MAY 2018)

Answer:

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 the month of August cannot revise it. However, he should rectify said error in the GSTR-1 filed for the month of February and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February. 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, no rectification of details furnished in GSTR-1 shall be allowed after:

(i) 30th November Next financial year to which Such Returns belongs to or

(ii) filing of the relevant annual return, whichever is earlier.

3. **B Ltd. has filed the return for the month of October belatedly. At the time of computing the late fee to be paid for delay in filing return, B Ltd. has taken a view that if the late fee has been paid as per the provisions under the CGST Act, there is no requirement of paying the late fee under the SGST Act for the same default.**

   Whether B Ltd. has taken a correct view? Examine.

Answer:

The understanding of B Ltd. is incorrect. For arriving at the late fee payable on account of delayed filing of GST return, the computation of late fee is made separately for CGST and SGST/UTGST. This is because the provisions of late fee on delayed filing of return are prescribed in both CGST Act and SGST/UTGST Act although a common return is filed for both the laws.

4. **Tax authorities have been scrutinizing the returns furnished by A Ltd. During the scrutiny process, A Ltd. has been made aware by the authorities about an incorrect disclosure in a return under section 39 filed by it for a particular tax period.**

   A Ltd. seeks your opinion to rectify the incorrect disclosure made in the return.

Answer:

In terms of section 39(9), any rectification in the return (under section 39) furnished by the registered person is allowed only when the error or omission is discovered on account of reasons other than scrutiny, audit, inspection, or enforcement activity by the tax authorities.

In the present case, since the incorrect disclosure has been highlighted to A Ltd. by the tax authorities during the process of scrutiny, the rectification of the incorrect disclosure cannot be made by A Ltd. on its own.

5. **ABC Ltd. has applied for cancellation of GST registration in the month of March. The consultant of ABC Ltd. has suggested to furnish the final return in the month of September. He has advised the company that a final return needs to be furnished before the due date of furnishing the return for the month of September of subsequent financial year or before furnishing of annual return (for the financial year in which cancellation has been sought for), whichever is earlier. However, the jurisdictional authorities have yet not passed the order of cancellation due to reasons not known to ABC Ltd.**

   Whether the advice given by the consultant of ABC Ltd. is correct? Examine.

Answer:

No, the advice of the consultant is not correct.

In terms of section 45 read with rule 81, every registered person who is required to furnish GSTR-3B and whose registration has been cancelled is required to file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later.

In the given case, the registration of the company has not been cancelled. Therefore, requirement of filing final return will arise only when the registration of the company gets cancelled.

6. XYZ Ltd. has deducted TDS from the consideration payable to A Ltd. for supplies made by it. The deductee, i.e. A Ltd., seeks your advice on taking credit for the TDS deducted by XYZ Ltd. Also, whether the tax deducted by XYZ Ltd. will be shown in the electronic credit ledger or electronic cash ledger of A Ltd.?

Answer:

In terms of section 51(5) read with rule 66(2), the deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in GSTR-7 of the deductor, after validation. Similarly, rule 87(9), inter alia, provides that any amount deducted under section 51 shall be credited to the electronic cash ledger of the deductee.

Therefore, in the present case, A Ltd., can take credit of TDS amount deducted by XYZ Ltd. in its electronic cash ledger and use the same for payment of tax, interest, penalty, late fee or any other amount.

7. Explain the provisions of section 39(9) of the CGST Act, 2017 with reference to rectification of returns. (RTP MAY 2019)

Answer:

As per section 39(9) of the CGST Act, 2017, if any registered person after furnishing a return discovers any omission or incorrect particulars therein, he shall rectify such omission or incorrect particulars in the return to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest. However, section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities.

Further, no such rectification of any omission or incorrect particulars shall be allowed after 30th November following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

8. M/s. Sahu & Co. a registered firm has filed its GST Return in GSTR-1 for the month of February, 2025 declaring an outward supply of Rs. 300 lakhs. The return was filed within the due date of its filing.

However, on a subsequent reconciliation of the return with the books of accounts it was found that 5 invoices having a total value of Rs. 20 lakhs towards supply made to local parties were inadvertently omitted to be reported.

Sahu & Co. have approached you for an advice as to the course of action to be adopted to rectify the omission. (MTP NOV 2018)

Answer:

As per GST law, the mechanism of filing revised returns for any correction of errors/omissions has been done away with. The rectification of errors/omissions is allowed in the subsequent Returns. However, no rectification is allowed after 30th November following the end of the financial year to which such details pertain or furnishing of the relevant annual return, whichever is earlier.

Hence, the omission in the month of Feb 2025 can be included in the Return for the month when the omission is noticed. The tax and interest @ 18% due on the turnover omitted to be reported for the month of Feb 2025 has to be paid along with the taxes for the month in which the omission is noticed.

However, such rectification will be allowed only within the prescribed period as mentioned above.

9. Padmavati Traders, registered in Karnataka, is engaged in supply of taxable goods. Its turnover in the preceding financial year was ₹ 230 lakh and was furnishing its GST return on monthly basis. In the beginning of April month in the current financial year, it sought advice from its tax consultant, Dua Consultants, whether it can furnish its GST returns on

quarterly basis from now onwards. Dua Consultants advised Padmavati Traders that it cannot furnish its return on quarterly basis as the GST law does not provide for quarterly return under any circumstances. Discuss the technical veracity of the advice given by Dua Consultants. (RTP Nov 21)

Answer:

No, the advice given by Dua Consultants is not valid in law. With effect from 01.01.2021, a quarterly return has been introduced under GST law where the payment of tax is to be made on monthly basis. The scheme is known as Quarterly Return Monthly Payment (QRMP) Scheme.

The scheme has been introduced as a trade facilitation measure and in order to further ease the process of doing business. It is an optional return filing scheme, introduced for small taxpayers having aggregate annual turnover (PAN based) of upto ₹ 5 crore in the current and preceding financial year to furnish their Form GSTR-1 and Form GSTR-3B on a quarterly basis while paying their tax on a monthly basis through a simple challan. Thus, the taxpayers need to file only 4 GSTR-3B returns instead of 12 GSTR- 3B returns in a year. Similarly, they would be required to file only 4 GSTR-1 returns since Invoice Filing Facility (IFF) is provided under this scheme.

Opting of QRMP scheme is GSTIN wise. Distinct persons can avail QRMP scheme option for one or more GSTINs. It implies that some GSTINs for a PAN can opt for the QRMP scheme and remaining GSTINs may not opt for the said scheme.

Since the aggregate turnover of Padmavati Traders does not exceed ₹ 5 crores in the preceding financial year, it is eligible for furnishing the return on quarterly basis till the time its turnover in the current financial year does not exceed ₹ 5 crore. In case its aggregate turnover crosses ₹ 5 crore during a quarter in the current financial year, it shall no longer be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter and needs to opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which its aggregate turnover exceeds ₹ 5 crore

10. Mr. Mahendra, a registered person, came to know about QRMP (Quarterly Return-Monthly Payment) scheme but was unable to make a decision whether to opt for the same or not. Describe the eligibility criteria and benefits of QRMP Scheme to help Mr. Mahendra make a decision regarding the same. (4 Marks PP Nov 22)

Answer:

Eligibility criteria for QRMP scheme Registered persons,

- other than supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory and providing such services to a non-taxable online recipient and whose aggregate annual turnover (PAN based) is up to ₹ 5 crore in the preceding financial year.
- who have opted to furnish quarterly returns under QRMP scheme
- who have furnished the last return due on the date of exercising such option are eligible to opt for QRMP scheme.

Benefits of QRMP scheme

- It is a trade facilitation measure and eases the process of doing business.
- It will significantly reduce the compliance burden on such taxpayers as now the taxpayers need to file GSTR-3B returns and Form GSTR-1
- on quarterly basis only 4 times a year.

Other ICAI Module Questions

11. Is an annual return under section 44 and a final return one and the same? Explain.

Answer:

No. Annual return has to be filed by every registered person paying tax as a normal taxpayer, with certain exceptions. Final return has to be filed only by those registered persons whose registration under GST has been cancelled. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.

12. Do input service distributors (ISDs) need to file separate statement of outward supplies (GSTR-1) with their return? Discuss.

Answer:

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.

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

Answer:

No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner(GSTP) as authorised by him subject to confirmation of registered person over mail or SMS each time when return filed by GSTP .

14. Whether GSTPs are required to furnish any return for disclosure of activities carried out by them for any of the registered person during a tax period? Elucidate.

Answer:

In terms of section 48(2), a registered person may authorise an approved GSTP to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or annual return under section 44 or final return under section 45 and to perform other prescribed functions. Thus, the GSTP can furnish the specified documents or information on behalf of the registered person with prior authority of the registered person. However, there is no specific return furnishing mechanism for GSTP itself to disclose the activities carried out by it for any of the registered person during a tax period.

15. A Ltd. is registered under GST in Rajasthan, Delhi, Haryana and Punjab. Due to closure of business activities in Rajasthan with effect from May 31, 2025, A Ltd. filed an application for cancellation of registration before the jurisdictional tax authorities of Rajasthan. The application for cancellation of registration was filed on June 30, 2025. The registration was suspended with immediate effect from June 30, 2025, by the jurisdictional tax authorities. The final order of cancellation was dated July 31, 2025.

You are required to advise A Ltd. regarding the last date for filing the final return by it in Rajasthan.

Further, A Ltd. was also registered as an ISD (Input Service Distributor) in Rajasthan; said registration was cancelled with effect from June 30, 2025 with an order dated July 31, 2025. Advise whether the final return is required to be filed upon cancellation of ISD registration by A Ltd.? If yes, what is the due date for filing said final return? RTP MAY 2024

Answer:

As per section 45 read with rule 81, every registered person who is required to file a return under section 39(1) and whose registration has been cancelled is required to file a final return electronically in Form GSTR-10 through the common portal. The final return has to be filed within 3 months of the:

(i) date of cancellation or

(ii) date of order of cancellation whichever is later.

Thus, in the given case, final return for Rajasthan registration has to be furnished within three months of the date of order of cancellation of registration (July 31, 2025). Hence, final return has to be filed by A Ltd. on or before October 31, 2025.

Further, since an ISD is not required to furnish return under section 39(1) but under section 39(4), final return is not required to be filed upon cancellation of ISD registration. Therefore, A Ltd. is not required to furnish final return for ISD registration cancelled.

16. Discuss the cases where a registered person is not allowed to furnish the details of outward supplies under section 37 in Form GSTR-1 or using invoice furnishing facility, as enumerated in rule 59. RTP NOV 2024

Answer:

Rule 59(6) provides that:

(i) a registered person shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he has not furnished the return in Form GSTR-3B for the preceding month.

(ii) a registered person, opting for QRMP scheme, shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using Invoice Furnishing Facility (IFF), if he has not furnished the return in Form GSTR-3B for preceding tax period.

(iii) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88C(1) in respect of a tax period, shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of rule 88C(2).

(iv) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period/periods, shall not be allowed to furnish Form GSTR1/IFF for a subsequent tax period, unless he has either paid the amount equal to the excess ITC as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess ITC that still remains to be paid, as required under the provisions of rule 88D(2);

(v) a registered person shall not be allowed to furnish Form GSTR1/IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A.

14 IMPORT & EXPORT UNDER GST

Multiple Choice Questions

1. George Ltd., India, has received an order for supply of services amounting to $ 5,00,000 from a US based client. George Ltd., India is unable to supply the entire services from India and asks Harry Inc., Mexico (who is not an establishment of George Ltd.) to supply a part of the services, i.e. 40% of the total contract value to the US client. George Ltd. raised the invoice for entire value of $ 5,00,000, but the US client paid $ 3,00,000 to George Ltd. and $ 2,00,000 directly to Harry Inc., Mexico which is approved by a special order of RBI. George Ltd. also paid IGST@ 18% on the services imported from Harry Inc. Mexico. Assuming all the conditions of section 2(6) of the IGST Act, 2017 are fulfilled, determine the value of export of services assuming that the amounts given above are exclusive of GST.

   (a) $ 3,00,000

   (b) $ 5,00,000

   (c) $ 3,90,000

   (d) $ 5,90,000 (2 Marks MTP Oct 22)

Answer: (b)

Theory

2. Elaborate the difference between zero rated supplies and exempt supplies. (6 Marks MTP April '23)

Answer:

The difference between zero rated supplies and exempted supplies is as follows:

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services to SEZ unit/SEZ developer.
No tax is payable on the outward exempted supplies, however, the input supplies used for making exempt supplies are to be taxed	No tax is payable on the outward supplies; Input supplies are also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken. No ITC is allowed on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC is allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or	A person exclusively making zero rated supplies needs to

services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

Practical Theory

3. **A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka.**

   Whether the transaction will qualify as export of goods under GST? Analyze the scenario and offer your comments.

Answer:

As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India. Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

4. **A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of Rs. 2,00,000 on inputs and input services which have been used exclusively in effecting such zero-rated supplies.**

   Examine if A Ltd. can avail ITC of input tax of Rs. 2,00,000 paid on inputs and input services used exclusively in effecting such zero-rated supplies.

Answer:

As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of Rs. 2,00,000 even if the outward zero- rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

5. **Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.**

   Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

Answer:

The supply of gaming software (Other than Online Money Gaming) is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an individual receiving OIDAR service for personal consumption, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services [Notification No. 9/2017 IT (R) dated 28.06.2017].

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non- taxable recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non- taxable online recipient is payable by the recipient of such service under reverse charge.

Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

6. **AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods.**

   Examine whether the view taken by AXT Ltd. is correct.

Answer:

AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale)

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct. is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

7. **GER Ltd. of Germany supplies luxurious car worth ₹ 1 crore to IND Ltd. of India. Before the car reached Indian port but after crossing of the territorial waters of India, IND Ltd. sells it to T1 Ltd. by way of transfer of documents of title. T1 Ltd. clears the said car for warehousing and stores said goods in customs bonded warehouse. T1 Ltd. sells the said car from warehouse to T2 Ltd., and T2 Ltd. clears the said car from the customs bonded warehouse.**

   Answer the following with brief reasons: (PAST EXAM JAN 2021)

   (i) Is GST leviable on import of goods from GER Ltd. by IND Ltd.?

   (ii) Is GST leviable on supply of goods by IND Ltd. to T1 Ltd.?

   (iii) Is GST leviable on supply of goods by T1 Ltd. to T2 Ltd.?

   (iv) Is GST leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse?

Answer:

(i) GST on import of goods is levied at the time when customs duty is levied on the said goods under the Customs Act, 1962, i.e., on importation. Importation gets completed when the goods become part of the mass of goods within the country. Thus, GST is not leviable on import of goods from GER Ltd. by IND Ltd. since the import of goods is not complete.

(ii) GST is not leviable on supply of goods by IND Ltd. to T1 Ltd. as supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption is treated neither as a supply of goods nor a supply of services.

(iii) GST is not leviable on supply of goods by T1 Ltd. to T2 Ltd. since supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services.

(iv) Yes, GST is leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse as customs duty is levied on warehoused goods at the time of clearance thereof from the warehouse and as mentioned in point (i), GST on import of goods is levied at the time when customs duty is levied thereon.

8. A Ltd., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, A Ltd has approached ABC Consultants, Mumbai, to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

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

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

Answer:

As per Sec 13(2) of the IGST Act, 2017 in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub- section (3) to (13) shall be the location of the recipient of services.

The given case does not fall under any of such specific situations and thus, the place of supply in this will be determine under sec 13(2).

Thus, the place of supply of service in this case is the location of recipient of services i.e., USA.

As per sec 2(6) of the IGST Act, 2017 export of services means the supply of any services when –

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

(ii) the recipient of service is located outside India;

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

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Since all the above 5 conditions are fulfilled in the given case, the same will be considered as a n export of service.

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

foreign customer.

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

The company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service? (5 Marks MTP April '23)

Answer:

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

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

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

As per section 13(8)(b) of the IGST Act, 2017, the place of supply in case of intermediary services is the location of the supplier, i.e. the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,—

(a) the supplier of service is located in India;

(b) the recipient of service is located outside India;

(c) the place of supply of service is outside India;

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

(Post effective of the amendment on Intermediary, the answer to this question can be different as the place of supply would be as per general provision not under 13(8), students writing sep 26 exam onwards to note this)

10. Mounty Ltd. entered into a high sea sale transaction with Fuji Ltd. for certain goods. Mounty Ltd. wishes to understand the taxability of the high sea sales under GST law and Customs Act, 1962.

Examine whether the view taken by Mounty Ltd. is correct. (RTP Nov 23)

Answer:

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act. Thus, GST is not leviable on high sea sales at the time of making such sales.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. In case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Other ICAI Module Questions

11. Explain how imports are taxed under GST.

Answer:

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 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.

12. Describe how exports are taxed under GST.

Answer:

Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

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

Answer:

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 ₹ 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 as amended.

14. 'Separate LUT is to be furnished for every export supply.' With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

Answer:

No, the statement is not correct. The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply. However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee. Rule 96A(1) provides inter alia that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.

15. 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)? Examine.

Answer:

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 is treated as 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 are 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 interState supply.

16. Smith Inc., a company located in USA, charges subscription fee from its unregistered customers in India at its online money gaming portal. The Department contends that GST should be charged on the subscription fees which Smith Inc. receives from Indian customers.

Smith Inc. opposes the above view stating that since online money gaming are intangible goods and do not cross customs frontiers physically in this case, GST is not leviable thereon.

Considering the above facts, you are required to answer the following questions:

(i) What would be the place of supply in this case?

(ii) Whether GST is leviable on the subscription fee charged by Smith Inc. from unregistered customers? If yes, who is required to pay said GST? (RTP MAY 2025)

Answer:

(i) As per section 11 of the IGST Act, 2017, the place of supply of goods imported into India is the location of the importer. Online money gaming being specified actionable claim is covered in goods, in terms of section 2(52) read with section 2(102A). Accordingly, in the given case, the place of supply would be location of the recipient of specified actionable claim of online money gaming, i.e., India.

(ii) As per proviso to section 5(1) of the IGST Act, 2017, IGST on goods imported into India is levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

However, in case of intangible goods, it is not possible to levy and collect IGST on imports in said manner, as the goods do not cross the customs frontiers physically. Resultantly, the Government has notified certain goods for whom proviso to section 5(1) of the IGST Act, 2017 will not be applicable for levy and collection of IGST; in such cases, IGST shall be levied and collected in the manner specified in section 5(1) only. Supply of online money gaming has been notified for the said purpose.

So, import of specified actionable claim of online money gaming will be taxed under IGST as import of goods.

Accordingly, the contention of department is correct in this case and Smith Inc. is liable to pay IGST on subscription fees that it receives from unregistered customers from India.

As per section 14A of the IGST Act, 2017, a supplier of online money gaming, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply. Section 24(xia) makes it mandatory for a every person supplying online money gaming from a place outside India to a person in India to obtain registration irrespective of quantum of aggregate turnover. A supplier of online gaming services is required to take a single registration under a Simplified Registration Scheme.

However, if the supplier has a representative in India for any purpose, such person (representative in India) shall get registered and pay IGST on behalf of the supplier.

In case the overseas supplier neither has a physical presence nor has any representative for any purpose in India, he may appoint a person in India for the purpose of paying IGST and such person shall be liable for payment of such tax.

Accordingly, in the given case, since Smith Inc. is required to pay the IGST on the subscription fees that it charges from Indian customers, it is required to pay the IGST in the manner specified above.

17. Upasana Export House is engaged in manufacturing the taxable goods in the State of Haryana. It participates in Global Trade Fair to be held in United States of America in the month of January. It intends to send 100 units of goods manufactured by it to USA for display in the said exhibition.

Upasana Export House is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply under GST law. However, its tax advisor does not concur with its view. Examine whether the view of Upasana Export House is correct.

Assuming that Upasana Export House could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August, Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if Upasana Export House sells an aggregate of 85 units of the taxable goods in USA exhibition on different dates in January and remaining 15 units are brought back on 31st January. The tax advisor of Upasana Export House advises it that the export of 85 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice.

(5 Marks) (MTP May 2024)

Answer

No, the view of Upasana Export House that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct.

As per section 7 read with Schedule I of the CGST Act, 2017, any activity/transaction is considered as supply only when it is made in the course or furtherance of business and made for a consideration, except for activities enumerated in Schedule I of the CGST Act, 2017.

Section 16 of the IGST Act, 2017 defines "zero rated supply" as any of the following supplies of goods or services or both, namely:-

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, only such "supplies" which are either "export" or are "supply to SEZ unit/ developer" would qualify as zero-rated supply.

In view of the above provisions, CBIC vide a circular clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

The said circular further clarified that the activity of sending/taking goods out of India for exhibition is in the nature of **"sale on approval basis"** wherein the goods are sent/ taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place.

In case of the goods being sent or taken on approval for sale, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier. The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan.

In view of the said provisions, Upasana Export House is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply. However, the goods shall be accompanied with a delivery challan.

Further,

(i) In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by Upasana Export House in February, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

(ii) In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by Upasana Export House in August, i.e. after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods in accordance with the applicable provisions within the specified time period.

15 REFUND OF GST

Theory

1. With reference to section 54(3), mention the cases where refund of un-utilized input tax credit is allowed. (MTP NOV 2020)

Answer:

As per section 54(3), 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.

2. List any four exceptions when theory of unjust enrichment is not applicable under the provisions of CGST Act, 2017. (4 Marks PP Dec '21)

Answer:

Unjust enrichment is not applicable in the following cases:

(a) refund of tax paid on exports or on inputs/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 treated 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;

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Practical Theory

3. 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	(Rs.)
(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. Further, value of like goods domestically supplied by the similarly placed supplier is Rs. 6,00,000]	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)	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 (Value of like goods domestically supplied by the similarly placed supplier is Rs. 5,00,000)	6,00,000

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

S.No.	Particulars	(Rs.)
(i)	On inputs	3,50,000
(ii)	On capital goods	1,20,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period. (RTP MAY 2019)

Answer:

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

Particulars	(Rs.)
Exports of product 'A' to UK [Note (i)]	Nil
Domestic supplies of taxable product 'B' during the period [Note (ii)]	75,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	75,000
Total refund claim admissible	1,50,000

Notes:

(i) 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), 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.

(ii) 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)].

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

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 = Rs. 10,00,000

× 5% = Rs. 50,000

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

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

(iii) As per section 2(39), deemed exports means such supplies of goods as may be notified under section 147. 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)]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

(iv) 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) 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:

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, 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 sub- rules (4A) or (4B) or both.

"Adjusted total turnover" means the same as explained in point ii above.

Here, Turnover of zero rated supply of goods = Rs. 6,00,000 (Lower of Rs. 6,00,000 or 1.5 times of Rs. 5,00,000 i.e. 7,50,000 whichever is lower), Net ITC = Rs. 3,50,000 and Adjusted Total Turnover = Rs. 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = Rs. 3,50,000 x Rs. 6,00,000/ Rs. 28,00,000 = Rs. 75,000.

4. 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* (Rs.)	Output GST Rates	ITC availed (Rs.)	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) 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.

(RTP NOV 2018)

Answer:

1. Section 54(3)(ii) 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). Therefore, only Product A is eligible for refund under section 54(3)(ii).

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

following formula –

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 = Rs. 5,00,000 × 5% = Rs. 25,000

Net ITC = Rs. 1,18,000 (Rs. 54,000 + Rs. 54,000 + Rs. 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 = Rs. 9,50,000 (Rs. 5,00,000 + Rs. 3,50,000 + Rs. 1,00,000) Turnover of inverted rated supply of Product A = Rs. 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

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

= Rs. 37,105 (rounded off)

5. Y Ltd. exported service valued at US $ 1,00,000. Supply of service was completed on 15th January. Payment for this service was received on 28th February. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and inputs services for Rs. 6,00,000 on 31st March. The refund claim was sanctioned on 30th June. 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? (MTP JULY 2021)

Answer:

As per clause (i) of first proviso to section 54(3), refund claim admissible to Y Ltd. on account of export of services being a zero-rated supply, is the unutilized ITC of Rs. 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. 28th February [Explanation to section 54].

As per section 56, 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 March, interest @ 6% p.a. is payable.

6. 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. (PAST EXAM MAY 2019) (MTP MAY 2020)

Particulars	Amount
Opening balance of ITC	5,00,000
ITC availed during the period	25,00,000
Zero rated supply of goods made during the period without payment of tax under bond/ LUT	6,00,00,000
Supply of goods other than zero rated supply	3,00,00,000

Answer:

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

Net ITC

~~excludes ITC availed for which refund is claimed under rule 89(4A)/ (4B) of the CGST Rules, 2017~~.

Accordingly, turnover of zero rated supply of goods = ₹ 6,00,00,000 ;

Net ITC = ₹ 25,00,000 and Adjusted Total Turnover

= ₹ 9,00,00,000 [₹ 6,00,00,000 + ₹ 3,00,00,000]

Thus, maximum refund amount under rule 89(4)

= ₹ 25,00,000 × ₹ 6,00,00,000 /₹ 9,00,00,000 = ₹ 16,66,667.

7. Synotex Pvt. Ltd. manufactures taxable goods, 'Q' and exempt goods 'S'. Product 'S' is sold in international markets without payment of tax under letter of undertaking. The company is registered under GST in the State of Maharashtra. The company provides the following information in relation to various supplies made by it during a tax period:

(a) Product 'S has been exported to UK for £ 12,000

(b) Product 'Q' has been supplied to Betty Enterprises within India for ₹ 20,00,000

Note: The above amounts are exclusive of taxes, wherever applicable.

The company provides the following information in relation to tax paid on inward supplies received during the said tax period:

(a) GST of ₹ 5,00,000 has been paid on inputs

(b) GST of ₹ 2,40,000 has been paid on capital goods

(c) GST of ₹ 2,00,000 has paid on input services

(d) All the above inputs, input services and capital goods are used in the manufacturing process Following additional in formation is also provided:

(i) Value of product 'S' exported to UK in Indian rupees is ₹ 12,00,000. However, value of such product when supplied domestically by the company in similar quantities is ₹ 10,00,000.

(ii) Betty Enterprises is a 100% export-oriented undertaking. It has claimed the ITC on goods supplied to it by Synotex Pvt. Ltd.

(iii) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the end of the tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed is ₹ 5,80,000.

(iv) The balance in the electronic credit ledger of Synotex Pvt. Ltd. at the time of filing the refund application is ₹ 3,00,000.

Compute the amount refundable to Synotex Pvt. Ltd. for the tax period.

(RTP NOV 2020)

Answer:

Export of product 'S'

Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, 2017, ITC may be availed for making zero-rated supplies even if such supply may be an exempt supply. As per section 54(3)(i) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC at the end of any tax period in the case of zero rated supply made without payment of tax.

Therefore, in the given case, Synotex Pvt. Ltd. will be eligible to claim ITC for export of exempt product 'S' in terms of section 16(2) of the IGST Act, 2017 and will thus, be able to claim refund of unutilised ITC in terms of section 54(3)(i) of the CGST Act, 2017. As per rule 89(4) of

the CGST Rules, 2017, refund of unutilized ITC in case of zero rated supply without payment of tax under letter of undertaking is

granted in accordance with the following formula

Here,

Net ITC = ₹ 7,00,000 [Net ITC includes ITC on inputs and input services but not ITC on capital goods]. Turnover of zero-rated supply of goods (Product 'S') = ₹ 12,00,000 [Lower of the value of zero rated supply of goods (₹ 12,00,000) or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier (₹ 15,00,000)].

Adjusted total turnover = ₹ 32,00,000 [₹ 20,00,000 + ₹ 12,00,000]

Thus, refund amount under rule 89(4) = ₹ 7,00,000 x ₹ 12,00,000/ ₹ 32,00,000 = ₹ 2,62,500.

Circular No. 125/44/2019 GST dated 18.11.2019 provides that amount refundable to the applicant is least of the following amounts:

(a) Maximum refund amount as per the formula in rule 89(4) of the CGST Rules [₹ 2,62,500]

(b) Balance in the electronic credit ledger at the end of the tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed [₹ 5,80,000]

(c) Balance in the electronic credit ledger at the time of filing the refund application [₹ 3,00,000] Thus, amount refundable to Pvt. Ltd. of unutilized ITC is ₹ 2,62,500.

Supply of product 'R' to Betty Enterprises, a 100% EOU

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, Betty Enterprises (recipient) is claiming ITC, Synotex Pvt. Ltd. (supplier of deemed exports) cannot claim refund of ITC. Therefore, amount refundable to Synotex Pvt. Ltd. is ₹ 2,62,500.

8. M/s Housefull Convention Hall is in the business of letting out its halls for functions. It provides you with the following information for determining the amount of refund out of advance received based on time of supply for one of its clients.

S.	Particulars	Date	Amount in
(1)	Advance paid at the time of booking the hall for a function from 1st to 3rd Nov.,	16.07.2019	1,00,000
(2)	Additional deposit paid	18.08.2019	2,00,000
(3)	Function is held as scheduled	1st Nov. to 3rd Nov.	
(4)	Invoice is issued (Taxable value)	25.11.2019	2,50,000
(5)	Consider that there is a change in the rate of tax on 15th October, 2019 from (CGST 2.5% and SGST 2.5%) to (CGST 9% and SGST 9%)		

What would be the amount of refund payable to the client? (PAST EXAM NOV 2020)

Answer:

The time of supply of services is the date of issue of invoice if the same is issued within 30 days from the date of supply of service or the date of receipt of payment, whichever is earlier. In the given case, invoice is issued within 30 days of the supply of service and advances have also been received.

Therefore, tax becomes payable at the time of receipt of advances on 16.07.2019 and 18.08.2019 as it is not clear at the time of receipt of such advances as to what would be the total value of the supply. However, when invoice is issued for a lesser value on 25.11.2019, refund would become payable to the client. In case of change in rate of tax, where the service is supplied and invoice is issued after the change in rate of tax and payment is received before change in rate of tax, time of supply shall be date of issue of

invoice, i.e., 25.11.2019.

Hence, applicable rate of tax is new rate even though tax has been paid at old rate on advances received. Therefore, refund payable to client will be computed as under:

Total advance received including GST* = ₹ 3,00,000

Less: Actual liability [₹ 2,50,000 + ₹ 2,50,000 x 18% (new rate of tax)] =

₹ 2,95,000 Amount of refund = ₹ 5,000

*It has been assumed that the advances received are inclusive of tax.

9. Jai and Co, a registered supplier under GST, is engaged in weaving yarn into fabrics and has provided the following information:

Nature of various intra-State supplies during April 2021	Value of supply (excluding GST) (₹)
Outward supply of fabrics (Tax rate of CGST and SGST is 2.5% each)	30,00,000
Inward supply of rayon yarn (Tax rate of CGST and SGST is 6% each)	24,00,000
Inward supply of services for processing the yarn (Tax rate of CGST and	4,00,000
SGST is 2.5% each)	
Inward supply of machineries for weaving the processed yarn into fabrics	45,00,000
(Tax rate of CGST and SGST is 9% each)	
The concern has not provided any supply other than the outward supply referred above. ITC in respect of all types of inward supplies as given above was claimed in the relevant GSTR 3B as well reflected in GSTR 2A.	
Other applicable conditions for claiming the refund are duly complied with.	

You are required to compute the 'maximum refund amount' eligible under rule 89(5) of CGST Rules, 2017 for inverted duty structure. Also provide working notes for your calculation. (5 Marks Dec '21) Note - No refund has been claimed under rule 89(3) or rule 89(4) of the CGST Rules, 2017

Answer:

Maximum refund amount under rule 89(5) of the CGST Rules, 2017 on account of inverted duty structure, is computed as follows -

Maximum Refund Amount Turnover of inverted rated supply of

= goods and services × Net ITC – Adjusted Total Turnover

Tax payable on such inverted rated supply of goods and services

where Net ITC means ITC availed only on inputs

=₹ [(24,00,000×6%) × 30,00,000/30,00,000]-[30,00,000×2.5%]

(each for CGST and SGST) = ₹ 69,000

Thus, maximum refund amount is ₹ 69,000 each for CGST and SGST.

Note: Refund of tax paid on input services and capital goods is not a part of refund of accumulated ITC on account of inverted duty structure.

Other ICAI Module Questions

10. Is there any time limit for sanctioning of refund under section 54?

Answer:

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. 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, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

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

Answer:

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. However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non realization of sale proceed along with interest within 30 days [Rule 96B].

12. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).

Answer:

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)].

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

Answer:

Rule 90(3) 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. Further the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies by the proper officer, shall be excluded from the period of two years as specified under Section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

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

Answer:

The principle of unjust enrichment is applicable in all cases of refund except in the following cases:- (a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports. (b) 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. (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued. (d) 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. (e) if the incidence of tax or interest paid has not been passed on to any other person. (f) such other class of persons who has borne the incidence of tax as the Government may notify

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

Answer:

Section 54(8) 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;

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

16. EverYoung Manufacturers LLP, a registered supplier under GST is engaged in manufacturing of ayurvedic cosmetic products within the State of Gujarat. It provides the following information for the month of January, 2023

Particulars for the month of January,2023	Rate of CGST	Rate of SGST	Value of supply (excluding GST)
Outward supply of skin care products	2.5%	2.5%	50,00,000
Outward supply of skin care products	6%	6%	50,000
Inward supply of Inputs for skin care products	6%	6%	35,00,000
Inward supply of Input services	2.5%	2.5%	5,00,000
Inward supply of capital goods	9%	9%	25,00,000

Other information:

(a) ITC in respect of all types of inward supply as given above was claimed in the relevant GSTR 3B and the same was also reflected in GSTR 2B.

(b) All other conditions for claiming the refund are duly complied with.

(c) No refund was claimed for the month of January 2023.

You are requested to compute the 'Maximum refund amount' eligible for inverted duty structure. Working notes should form part of your answer. (5 Marks) (MAY 2023)

Answer:

Particulars
(i) Turnover of inverted rated supply of goods and services = 50,00,000
(ii) (product having rate less than 6% to be considered)
(iii) Adjusted Total Turnover 50,00,000 + 50,000 = 50,50,000
(iv) Net ITC: means ITC available only on Inputs 3500000 @ 12% = 4,20,000 ITC of Input service and Capital Goods not to be considered.

(v) Tax payable on such inverted rated supply of goods and services 2,50,000 [(50,00,000 × 5%) (vi) ITC availed on inputs [(35,00,000×12%) = 4,20,000 (vii) ITC availed on input services [(5,00,000×5%)] = 25,000
Maximum refund 50,00,000 × 4,20,000 - 2,50,000 4,20,000 amount eligible in = the given case 50,50,000 4,45,000 = Rs. 1,79,887 (rounded off) (Total under CGST and SGST) Or Rs. 89,943.50+89,943.50 each (under CGST and SGST)

17. Bhagwan Manufacturers & Exporters Company (BMEC) is registered under GST in the State of Rajasthan and supplies various goods in domestic as well as in international markets. It is engaged in both manufacturing and trading of goods. It exports goods without payment of tax under bond or letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.

BMEC provides the following information in relation to various supplies made by it during October, 2023 tax period:

S. No	Particulars	(Rs.)
1.	Taxable value of goods 'Star' supplied within India	14,00,000/-
2.	Taxable value of goods 'Sun' exported without payment of tax under letter of undertaking. (However, taxable value of such goods when supplied domestically by BMEC in similar quantities is Rs. 6,00,000).	10,00,000/-
3.	Taxable value of goods 'Moon' exported without payment of tax under bond. (However, taxable value of such goods when supplied domestically by BMEC in similar quantities is Rs. 1,50,000)	2,00,000/-

The input tax credit (ITC) availed for the above tax period is as follows:

S.No.	Particulars	(Rs.)
1	Input tax credit availed on capital goods	1,00,000/-
2	Input tax credit availed on inputs	3,00,000/-
3	Input tax credit availed on inputs services	1,50,000/-
BMEC also provided following additional information:		
(i)	All the above inputs, input services and capital goods are used in manufacturing process and all the conditions for availing input tax credit have been complied with.	
(ii)	The balance in the electronic credit ledger of BMEC at the time of filing the refund application is Rs. 1,50,000/-.	
(iii)	The balance in the electronic credit ledger of BMEC at the end of the October 2023 tax period for which the refund claim is being filed after GSTR-3B for the said period has been filed is	

	Rs. 3,25,000/-

You are required to compute the amount refundable to Bhagwan Manufacturers & Exporters Company against accumulated unutilized input tax credit for October 2023 tax period according to the provisions of GST law by giving necessary explanations for treatment of various items.

(5 Marks) (EXAM MAY 2024)

Answer:

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

$$\text{Refund Amount} = \frac{\text{Turnover of zero-rated supply of goods}}{\text{Adjusted Total Turnover}} \times \text{Net ITC on inputs and input services}$$

$$= \frac{[9,00,000^* + 2,00,000^{**}]}{[9,00,000 + 2,00,000 + 14,00,000]} \times (150,000 + 3,00,000)$$

=Rs. 1,98,000

*Turnover of goods 'Sun' = Lower of (i) Rs. 6,00,000 × 1.5 or (ii) Rs. 10,00,000, i.e. Rs. 9,00,000

**Turnover of goods 'Moon' = Lower of (i) Rs. 1,50,000 × 1.5 or (ii) Rs. 2,00,000, i.e. Rs. 2,00,000

Refundable amount is the least of the following:

(a) Refund as per rule 89(4) of the CGST Rules, 2017 [Rs. 1,98,000]

(b) Balance in ECL at the time of filing refund application, [Rs. 1,50,000] and

(c) Balance in ECL at the end of October 2023 for which refund is being filed after the return in Form GSTR-3B for the said period has been filed [Rs. 3,25,000]

Thus, the refundable amount is Rs. 1,50,000.

ITC is on capital goods is not eligible for refund

[1] It has been most logically presumed that ITC figures given in the question pertains to both CGST and SGST or IGST.

18. Agora Ltd. exported certain goods to its customer located in Germany against which a refund of IGST amounting to Rs. 50 lakh was claimed and received by Agora Ltd. The sale proceeds covering 50% of the value of exports were immediately received by Agora Ltd. However, due to financial constraints, the customer failed to pay the balance amount of sale proceeds within the permissible time limits under regulatory provisions prevailing in India.

In view of the aforesaid scenario:

(a) Determine the amount of refund, if any, which Agora Ltd. is required to deposit back. Also, discuss the time limit which is permissible under law within which the sale proceeds in respect of exported goods should have been realized by Agora Ltd.

(b) Will your answer to sub-part (a) differ if the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits?

(c) Whether Agora Ltd. can claim the refund back in case sale proceeds are realised at a later date? (RTP NOV 2024)

Answer:

a) As per proviso to section 16(3) of the IGST Act, 2017 read with rule 96B(1) of the CGST Rules, 2017, in the given case, Agora Ltd. shall deposit the amount of refund proportionate to the sale proceeds not realized i.e. 50% of the value of exports. The amount of such refund is Rs. 25 lakh alongwith applicable interest under section 50. Further, such amount is required to be deposited by Agora Ltd. within 30 days of the expiry of the time period allowed under Foreign Exchange Management Act, 1999, including any extension of such time period permitted.

b) As per proviso to rule 96B, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the time period allowed under the Foreign Exchange Management Act, 1999, but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered. Thus, if the RBI writes off the requirement of realisation of sale proceeds by Agora Ltd., the refund amount received by Agora Ltd. is not liable to be recovered.

c) As per rule 96B (2), where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under rule 96B (1) and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

In case the refund amount is deposited by Agora Ltd. alongwith interest as per rule 96B(1) on account of non-realization of sale proceeds from the customer, which is realized on a later date, Agora Ltd. can claim the refund within 3 months from the date of realization of sale proceeds in proportion of the sale proceeds recovered.

However, in order to claim such refund, the sale proceeds should have been realized within such extended period as may be permitted by the RBI.

19. M/s Surajbhan & Co. is registered under GST in the state of Maharashtra. They have made zero-rated supply of goods worth Rs. 84,50,000 without payment of IGST for Rs. 10,14,000 during the month of May. The refund application under section 54 for the above supply has been rejected by the proper officer.

Mr. Abhay, taxation manager of the firm, has sought for recrediting the Electronic Credit Ledger as per the provisions of rule 86 for the above rejection. Examine the scenario and offer your comments. (5 Marks) (MTP May 2025)

Answer

Rule 86 of the CGST Rules, 2017 provides that where a registered person has claimed refund of any unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54 of the CGST Act, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Surajbhan & Co., have made zero-rated supply without payment of IGST for Rs. 10,14,000 and the refund

for the same has been rejected by the proper officer.

Therefore, contention of Mr. Abhay is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub-rule (3) of Rule 86 towards "refund of any unutilized amount".

16 JOBWORK

Practical Theory

1. 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?

Answer:

Genie Engineers should reply on the following lines:

Under section 19(6), 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 [extendible by another 2 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.

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

   On 10th January, 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 delivery challan to Plasto Manufacturers on 20th October 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 20th October.

   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) Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges? (MTP MAY 2019)

Answer:

(i) As per section 2(68), 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 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, processing or treatment 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 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 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery 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.

Rule 45 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery 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), 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).

3. **Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth Rs. 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 28th January. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of Rs. 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 Rs. 45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 3rd December 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. (MTP MAY 2018)

Answer:

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 Alok Pvt. 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). 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 (Rs.)
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

4. **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 10th April and were received by the job worker on 15th April. 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? (MTP NOV 2020)

Answer:

As per section 19(5), 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) 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 15th April (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 15th April 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)].

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.

5. A ltd sends the goods to B & co. for making finished goods on 30/07/2017. What are the tax implications, in the following cases if GST @ 18% is levied.

   (i) B & co. sends the goods back to A ltd within one year of being sent.

   (ii) B & co. sells the goods directly to the customer in behalf of A Ltd.

Answer:

As per Sec 143 of the Act, 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 B & co. – As per the sec 143 of Act, no tax shall be payable on supply of goods to B & co. However, the tax will be payable if finished goods is not returned before one year from 30/07/2017.
- B & co. sends the finished goods back to A ltd – As per the Act, there is no tax liability on returning of goods back to the principal i.e A ltd within a period of one year. Hence post completion of Job Work, no tax is liveable on finished goods returned to A ltd.
- B & co. sells the finished goods on behalf of A ltd- Sec 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. A Ltd is liable to pay GST on sale of Finished gods to customer by B & co.

  However, A ltd must declare the premises of B & co. as an 'Additional Place of Business' and the sale of finished goods will form part of aggregate turnover of A ltd. Such a declaration is not required in case where:

- Job worker is registered under Sec 25 or
- Principal is engaged in supply of notified goods.

6. A ltd sends the goods/inputs to B & co. for further processing on 30/08/2021. The value of goods sent for job work is Rs. 100,000. What are the tax implications, in the following cases, if GST @ 18% is leived.

   (i) B & co. sends the processed goods back to A Ltd on 30/10/2021.

   (ii) B & co. send the processed goods back to A Ltd on 30/10/2022.

Answer:

B & co. sends the processed goods back to B ltd on 30/10/2017 – As per Sec 143, 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 30/08/2021 and subject to tax along with interest.

In the present case, as the inputs are received back on 30/10/2021 i.e before completion of one year, and hence no tax is payable.

B & co. sends the processed goods back to B ltd on 30/10/2022 – As per Sec 143, 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 30/08/2021 and subject to tax along with interest.

In the present case, as the inputs are received back on 30/10/2018 and hence A Ltd needs to pay tax @ 18% i.e Rs. 9000 CGST and Rs. 9000 SGST along with the specified interest on completion of one year.

7. P ltd send the machinery to R & co. for fixing of some technical issue and maintenance on 15/08/2021. The value of goods sent to R & co. is Rs. 100,000. What are the tax implications, in the following cases.

   (i) R & co. sends the machinery back to 30/12/2022

   (ii) R & co. sends the machinery back to 30/12/2024

Answer:

R & co. sends the machinery back to 30/12/2022 – As per Sec 143, Principal can remove the gods without payment of tax and take input tax credit provided capital goods sent for job work are returned within 3 years of removal. Otherwise, it shall be treated as supply from principal to Job worker as on 15/08/2017 and subject to interest along with.

In the present case, as the machinery is received back on 30/12/2022 i.e before completion of 3 years, and hence no tax is payable.

R & co. sends the machinery back to 30/12/2024 – In the present case, as the machinery is received back on 30/12/2024 i.e after completion of 3 years, and hence tax is payable @ 18% i.e SGST and CGST Rs. 9000 each along with specified interest on completion of 3 years.

8. Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. The job worker undertakes the processing work on the yarn as per the requirement of Nandeeshwar Manufacturers. During the process, the job worker uses his own material also. The processed yarn is sold by Nandeeshwar Manufacturers directly from the job worker's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April. The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of accountant of the job worker?

Answer:

No, the opinion of the accountant of the job worker is not correct. Section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II. Any processing activity carried on any other person's goods is treated as supply of service in

terms of Schedule

II. Circular No. 38/12/2018 GST dated 26.03.2018 has also clarified 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. These goods are not supply per se, but are being used in the processing activity carried out by it. Thus, the activity undertaken by the job worker, in the given case, squarely falls within the purview of Schedule

II and shall be considered as supply of service by the job worker to Nandeeshwar Manufacturers.

Other ICAI Module Questions

9. 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?

Answer:

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 (i) where the job worker is a registered taxable person or (ii) where the principal is engaged in supply of such goods as may be notified by the Commissioner.

10. 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?

Answer:

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 along with interest. Further, if the job worker is registered, when the processed goods are sent back by it to the principal, the same shall also be considered as a supply over and above the charges for job work.

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

Answer:

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

17 ASSESSMENT OF AUDIT

Multiple Choice Questions

1. The time-limit for issuance of order of best judgment assessment under GST is:
   (a) 5 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
   (b) 4 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
   (c) 3 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
   (d) 2 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates. (1 Mark April '23)

Answer: (a)

2. Guruji & Associates is engaged in retail business of selling wedding outfits in the State of West Bengal. It has effected supplies to the customers in the State of Uttar Pradesh and Haryana. It's total turnover during the current financial year is Rs. 15,00,000. Owing to low profit margins in the business, it has decided to shut down the business in the next financial year.
   The proper officer has collected evidence of the inter-State supply of wedding outfits effected by Guruji & Associates during the current financial year. Now, the proper officer wants to make the assessment as it was liable to obtain registration but did not get itself registered under GST.
   You are required to assist the proper officer by determining which assessment can be done in this case under the CGST Act, 2017.
   (a) Self-assessment
   (b) Provisional Assessment
   (c) Assessment of unregistered persons
   (d) Special assessment (Nov 23)

Answer: (c)

Theory

3. Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017? (PAST EXAM MAY 2018) (MTP MAY 2020) (MTP NOV 2018, PP NOV 2022)

Answer:

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, 2017

(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. or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

4. Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017. (PAST EXAM NOV 2018) (MTP MAY 2020)

Answer:

Audit by Tax authorities under section 65 of the CGST Act, 2017:-

(i) 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.

(ii) 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:-

(i) 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.

(ii) Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

5. Briefly answer the following questions with reference to the provisions of rectification of mistakes/errors apparent on the face of record by any authority, under section 161?

(a) Which documents are covered under section 161?

(b) Who can rectify the errors apparent on the face of record?

(c) What type of mistakes or errors can be rectified?

(d) What is the time limit for rectification? (Nov'22)

Answer:

(a) Following documents are covered under section 161:

- Decision
- Order
- Any notice
- Certificate
- Any other document

(b) 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 documents.

(c) Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.

(d) No rectification can be made after a period of 6 months from the date of issue of such decision, order, notice, certificate or any other document.

However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.

Practical Theory

6. Kulbhushan & Sons has entered into a contract to supply a consignment 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 12thJanuary, 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 the goods on 25thJanuary thereafter paying the tax on provisional basis in respect of said consignment on 19thFebruary.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21stMarch, a tax of Rs. 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9thApril. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21stMarch, a tax of Rs.

4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9thApril and tax was refunded to it on 05thJune, determine the interest receivable, if any, by Kulbhushan & Sons in the given case. (RTP NOV 2018)

Answer:

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 25thJanuary under provisional assessment is 20thFebruary.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sonsis liable to pay following interest in respect of the consignment of goods supplied:

= Rs. 1,80,000 × 18% × 48/365

= Rs. 4,261 (rounded off)

If, in the given case, it is assumed that consequent to the final assessment order passed on 21stMarch, a tax of Rs. 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:

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 (05thJune) within 60 days from the date of receipt of application of refund (09thApril), interest is not payable to Kulbhushan & Sons on tax refunded.

7. 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 21stJune, 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 1stand 3rd consignments on 12thJuly, 20XX and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8thSeptember, 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. (PAST EXAM NOV 2018)

Answer:

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).

8. Prithviraj Ltd., registered under GST in Uttar Pradesh, is served a notice for audit by the tax authority under GST law on 10th July. The records and other documents as sought by the tax authority have been made available by Prithviraj Ltd. on 25th July. The tax authority visits the office of Prithviraj Ltd. located in Noida, Uttar Pradesh on 8th August for conducting audit. Determine the time-limit within which the audit under section 65 of the CGST Act, 2017 is required to be completed assuming that no extension is permitted in the given case. . (rtp- nov 2021)

Answer:

As per section 65(4) of the CGST Act, 2017, audit shall be completed within a period of 3 months from the date of commencement of the audit. Further, commencement of audit means the later of the following:

(a) the date on which the records and other documents, called for by the tax authorities, are made available by the registered person, or

(b) the actual institution of audit at the place of business of the taxpayer.

Accordingly, in the given case, date of commencement of audit is later of:

(a) the date on which the records and other documents, are made available by Prithviraj Ltd., i.e. 25th July, or

(b) the actual institution of audit at the place of business of Prithviraj Ltd., i.e. 8th August. Thus, date of commencement of audit is 8th August.

Hence, audit shall be completed within 3 months from the date of commencement of the audit (8th August).

9. M/s Ram Ltd. manufacture and cleared goods under provisional assessment, in the month of July, 2017, by paying tax of Rs. 50,000 on the 20th August, 2017 [i.e. due date of fling GSTR-3], a further tax of Rs. 90,000 is paid on the 15th November, 2017, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th November, 2017, assessing the tax payable on goods as Rs. 1,50,000, and consequently the assesse paid a tax of Rs. 10,000 on the 30th November, 2017. Find the total interest payable by the assessee?

Answer:

No interest shall be payable on Rs. 50,000.

Interest shall be payable on Rs. 90,000 from the 21st August 2017 to 15th November 2017.

Therefore No. of days delay = 87 days.

Interest shall be payable on Rs. 10,000 from the 21st August 2017 to 30th November 2017 as due date for payment of duty of Rs. 1,50,000 is the 20th August 2017.

Therefore, No. of days delay = 102 days. Rs. 90,000 x 18/100 x 87/365 = Rs3,861 Rs. 10,000 x 18/100 x 102/365 = Rs 503

Total interest payable = Rs. 4,364

10. What are the powers available to proper officers for scrutiny of returns under GST. The proper officer while conducting scrutiny of returns under Section 61 of the CGST Act, 2017, detected discrepancy in the return filed by M/s R Kumar Pvt. Ltd. (registered under GST). Explain the recourse that may be taken by the proper officer in case proper explanation is not furnished by M/s R Kumar Pvt. Ltd. (5 Marks) (MAY 2023)

Answer

The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed.

In case no satisfactory explanation is furnished by registered person, the proper officer may take recourse to any of the following provisions, namely:

(a) proceed to conduct audit under section 65 of the CGST Act.

(b) proceed to conduct special audit to be conducted by a Chartered Accountant or a Cost Accountant under section 66 of the CGST Act.

(c) undertake procedures of inspection, search and seizure under section 67 of the CGST Act.

(d) initiate proceeding for determination of tax and other dues under section 73/74 of the CGST Act

11. Write short note on "Summary Assessment" under section 64 of the CGST Act, 2017. (5 Marks) (NOV 2023)

Answer:

Summary assessments may be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when:

(i) the proper officer has evidence that a taxable person has incurred a tax liability, and

(ii) the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

In case Additional/Joint Commissioner considers such order to be erroneous, either on his own motion or on an application made by the taxable person within 30 days of receipt of order, he may withdraw such order.

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.

12. A notice for audit under section 65 is served by the proper officer on the basis of risk assessment to Ghoomghoom Pvt. Ltd. on 02.12.2023 for audit of financial years 2021-22 and 2022-23. The tax authorities visited its place of business on 20.12.2023 and requested for certain records, documents and books of accounts, from the company. The required records, documents and books of accounts are provided by Ghoomghoom Pvt. Ltd. on 30.12.2023. After in-depth checking of records, documents and books made available by Ghoomghoom Pvt. Ltd. during audit, the audit was completed on 25.03.2024 and audit findings were communicated to the taxpayer in prescribed form by said date. However, the accountant of Ghoomghoom Pvt. Ltd. is of the view that-

(i) the tax authorities have completed the audit of Ghoomghoom Pvt. Ltd. after the lapse of the maximum time-period permitted by the GST law and

(ii) the tax authorities cannot conduct the audit of two financial years at a time.

Ghoomghoom Pvt. Ltd. has approached you to advise you on the said issues. You are required to determine the technical veracity of the above views of the accountant of Ghoomghoom Private Ltd. on the same with reference to the relevant provisions of the GST law.

RTP NOV 2024

Answer:

As per section 65, audit of any registered person may be undertaken by:

- the Commissioner; or
- any officer authorized by him, by way of a general or a specific order.

The audit shall be completed within a period of 3 months from the date of commencement of the audit. However, where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

For the purposes of this sub-section, the expression "commencement of audit" shall mean:

(a) the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or

(b) the actual institution of audit at the place of business, whichever is later.

In the given case, the date of commencement of audit shall be determined as follows:

(a) The date on which requisite information is made available by Ghoomghoom Private Ltd., i.e., on 30.12.2023.

(b) The date of the actual institution of audit at the place of business,

i.e., on 20.12.2023

whichever is later.

Therefore, the date of commencement of the audit shall be 30.12.2023

Accordingly, the audit has to be completed within 3 months from the date of commencement of the audit, i.e., by 30.03.2024.

Thus, in the given case, the audit was completed by the tax authorities within 3 months from the date of commencement of the audit, i.e., before 30.03.2024. Resultantly, the view of the accountant of Ghoomghoom Pvt. Ltd. that the audit by the tax authorities was completed after the maximum time period prescribed by law for the same, is not correct.

Further, as per section 65 read with rule 101(1), the period of audit to be conducted under said section shall be a financial year or part thereof or multiples thereof. Thus, the view of the accountant that audit cannot be conducted for two financial years is also not correct.

13. ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66 of the CGST Act, 2017. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 of the CGST Act, 2017 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd.

The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per section 18 of the CGST Act, 2017. However, if ABC fails to exercise due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings. Discuss briefly, what will be its implications under GST law?

(5 Marks) (MTP May 2024)

Answer

ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122 of the CGST Act, 2017. This offence may also be punishable with imprisonment and fine depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

18 INSPECTION, SEARCH AND SEIZURE

Multiple Choice Questions

1. During access to any business premises under section 71 of the CGST Act, 2017, which of the following records can be inspected by the officers:

   (i) Trial balance

   (ii) Statements of annual financial accounts, duly audited, wherever required;

   (iii) Cost audit report

   (iv) Income-tax audit report

   Choose the most appropriate option.

   (a) (i) and (ii)

   (b) (i), (ii) and (iv)

   (c) (ii), (iii) and (iv)

   (d) (i), (ii), (iii) and (iv) (2 Marks March 22)

Answer: (d)

Theory

2. Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises. (MTP MAY 2018)

Answer:

During the course of any proceeding 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.

3. Explain the safeguards provided under section 69 to a person who is placed under arrest. (MTP NOV 2020)

Answer:

Section 69 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).

4. State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act. (MTP JULY 2021)

Answer:

The Commissioner of CGST can authorize a CGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2). This essentially means that a person can be arrested only where the tax evasion is more than Rs. 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

5. Discuss the power of the officer under GST law of access to business premises under section 71 of the CGST Act, 2017. (4 Marks MTP Sep 22)

Answer:

Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Every person in charge of place referred above shall, on demand, make available to the officer so authorised or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66-

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and

any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

6. List the safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure. (5 Marks PP May '22)

Answer:

The safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure are as under:

(i) Seized documents/goods/things should not be retained beyond the period necessary for their examination.

(ii) Photocopies/extracts of the documents can be taken by the person from whose custody documents are seized.

(iii) In case of seized goods, where a notice is not issued within 6 months [extendible for further 6 months] of their seizure, goods shall be returned to the person from whose possession they were seized.

(iv) An inventory of seized goods is required to be made by the seizing officer.

(v) Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.

(vi) Searches and seizures shall be carried out in accordance with the provisions of Code of Criminal Procedure. Instead of sending copies of any record made in the course of search to the nearest magistrate, it has to be sent to the Principal Commissioner / Commissioner of CGST

7. Discuss the precautions to be observed while issuing summons under GST law. (RTP Nov 23)

Answer:

The following precautions should generally be observed when summoning a person under GST law: -

(i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

8. What is search warrant? Who is the competent authority to issue Search Warrant under the CGST Act, 2017? What details should be contained in a Search Warrant? (4 Marks) (MAY 2024)

Answer:

A search warrant is a written authority to conduct a search.

The competent authority to issue a search warrant is an officer of the rank of Joint Commissioner or above.

A search warrant must indicate the existence of a reasonable belief leading to the search. Search warrant should contain the following details:

- the violation under the GST law,
- the premise to be searched,
- the name and designation of the person authorized for search,
- the name of the issuing officer with full designation along with his round seal,
- date and place of issue,
- serial number of the search warrant,
- period of validity i.e., a day or 2 days etc.

Note – Any two points may be mentioned.

9. Which officers under section 72 of the CGST Act, 2017 are empowered and are required to assist proper officers in the implementation of the CGST Act? (4 Marks) (MAY 2024)

Answer:

Under section 72 of the CGST Act, 2017, the following officers have been empowered and are required to assist CGST officers in the

execution of CGST Act:

(i) Police;

(ii) Railways

(iii) Customs;

(iv) Officers of State/UT/ Central Government engaged in collection of GST;

(v) Officers of State/UT/ Central Government engaged in collection of land revenue;

(vi) All village officers;

(vii) Any other class of officers as may be notified by the Central/State Government.

10. Under the GST law who can order for carrying out inspection and under what circumstances? (4 Marks) NOV 2024

Answer:

Inspection can be carried out upon a written authorization given by an officer of the rank of Joint Commissioner or above.

A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following to evade tax:

(i) suppressed any transaction of supply;

(ii) suppressed stock of goods in hand;

(iii) claimed excess input tax credit;

(iv) contravened any provision of the CGST Act to evade tax;

(v) a transporter or an owner/operator of a warehouse/godown/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.

11. State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, 2017 on the taxable person or any other person to whom it is intended.

(4 Marks) (MTP May 2024)

Answer

Any decision, order, summons, notice or other communication under the CGST Act , 2017 and the rules made thereunder can be served by any one of the following methods:

(a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or

(b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or

(c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or

(d) By making the same available at common portal; or

(e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or

(f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.

[Note: Any 4 points may be mentioned.]

12. Who can order for search and seizure under the provisions of the CGST Act, 2017?

(4 Marks) (MTP Nov. 2024)

Answer

An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. The Joint Commissioner/an officer above his rank empowered to authorize any officer to carry out search and seizure can himself also carry out search and seize such goods, documents or books or things.

19 DEMAND AND RECOVERY

Note: Please note, S. 73 and 74 are till only FY 23-24 and is being replaced with S 74A. Since upto FY 23-24 still the notices are generated using the S. 73 or 74, questions are still maintained for the exams.

Theory

1. Briefly discuss the modes of recovery of tax available to the proper officer. (MTP NOV 2019) (MTP NOV 2018)

Answer:

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].

2. Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. 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. (RTP MAY 2019)

Answer:

As per section 73, 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), the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

3. **A taxable person has mistakenly paid CGST and SGST for an inter- State supply. Subsequently, when he discovers the same, can he adjust the IGST liability against the wrongly paid CGST and SGST? (MTP NOV 2019)**

Answer:

Section 77, inter alia, stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter- State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed. The IGST liability cannot be adjusted against the CGST and SGST wrongly paid.

Practical Theory

4. **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. (MTP JULY 2021)**

Answer:

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, 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.

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.

5. **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. (RTP NOV 2018)**

Answer:

The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 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.

6. Rajul Associates has been issued a show cause notice (SCN) on 31.12.2021 under section 73(1) on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. It has been given an opportunity of personal hearing on 15.01.2022. Advice Rajul Associates as to what should be the written submissions in the reply to the show cause notice issued to it.

Answer:

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

(i) The show cause notice (SCN) issued for normal period of limitation under section 73(1) is not sustainable.

(ii) The SCN under section 73(1) can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10). The adjudication order under section 73(10) 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.

(iii) 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]. Thus, SCN under section 73(1) 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.

(iv) 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.

(v) 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).

7. Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31.01.2021 under section 73(1) 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. (MTP MAY 2018)

Answer:

The contention of Everest Technologies Private Limited is not valid in law. The SCN under section 73(1) can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) [Section 73(2)]. The adjudication order under section 73(10) 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]. Thus, SCN under section 73(1) 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.

8. **Anant & Co. self-assessed its tax liability as Rs. 90,000 for the month of April, but failed to make the payment. Subsequently the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th August which was received by Anant & Co. on 14th August. Anant & Co. deposited the tax along with interest on 25th August and informed the department on the same day. Department is contending that he is liable to pay a penalty of Rs. 45,000 (i.e. 50% of Rs. 90000). Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief. (PAST EXAM NOV 2018) (MTP MAY 2020)**

Answer:

Due date for payment of tax for the month of April is 20th May. As per section 73, 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 Rs. 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, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

(i) 10% of tax, viz., Rs. 9,000 (10% of Rs. 90,000) or

(ii) Rs. 10,000,

whichever is higher, is payable by him. Thus, penalty payable is Rs. 10,000.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of Rs. 45,000 is not correct.

9. **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. (MTP NOV 2020) (MTP NOV 2019)

Answer:

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.

10. 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.

Answer:

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 10% of tax, viz., ₹ 8,000 or ₹ 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 issues an order in this behalf.

11. 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.

Answer:

(a) Advice after issue of order:

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.

(b) Advice after issue of corrigendum:

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.

12. Mr. X, registered under GST Act, had made short payment of GST for the month of July 20XX. 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.

Answer:

(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.

13. Narmada Enterprises, a registered person, pays CGST and SGST on a transaction considered by it to be an intra-State supply. However, subsequently said transaction is held to be an inter-State supply.
    Examine the recourse available with Narmada Enterprises. (RTP NOV 2020)

Answer:

Section 77(1) of the CGST Act, 2017 stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra -State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid.

Further, section 19(2) of the IGST Act, 2017 provides that a registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra- State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

Thus, in the given case, Narmada Enterprises shall be refunded the amount of taxes so paid and it shall not be required to pay any interest on the amount of IGST payable by it on the transaction wrongly considered by it earlier as intra-State transaction.

14. A taxpayer has suppressed certain facts resulting in short payment of tax. The mistake is pointed out by the Department, but no show cause notice (SCN) has been issued. As per the taxpayer, suppression is accepted at ₹ 12,00,000 and he agrees that the suppression has taken place in the month of January, 2019. He clears the dues on 20th April, 2019. However, the Department, on verification identifies additional suppression of ₹ 2,00,000 in the same month of January, 2019. SCN is issued and the taxpayer represents before the proper officer, which results into an adverse order against the taxpayer. The order is passed on 25.05.2019 and the taxpayer complies with the adverse adjudication order on 27.06.2019. Determine the tax, interest and penalty payable at each stage. Assume Tax Rate as 18%. (PAST EXAM NOV 2019)

Answer:

Note: In the given question, suppression accepted at ₹ 12 lakh may be assumed to be either the value or the tax amount. Further, where the amount of ₹ 12 lakh is assumed to be the value of suppression. Further, as per explanation 2 to section 74 of the CGST Act,

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

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

Alternative 1-

Where amount of ₹ 12 lakh is assumed to be the value of suppression Tax, interest and penalty payable

before the issue of the SCN:

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

Value suppressed = ₹ 12,00,000 Tax @ 18% = ₹ 2,16,000

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

(It has been assumed that the information has been suppressed in the return/statement/report filed in the month

of January and thus, interest would become payable from 21st January in this case.)

OR

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

(It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable

from 21st February in this case.)

Penalty = ₹ 2,16,000 × 15% = ₹ 32,400

Tax, interest and penalty payable after the adjudication order:

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

Value suppressed = ₹ 2,00,000 Tax @ 18% = ₹ 36,000

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

(It has been assumed that the information has been suppressed

in the return/statement/report filed in the month of January and thus, interest would become payable from 21st January in this case.)

OR

Interest = ₹ 36,000 × 18% × 127/365 = ₹ 2,255 (rounded off) [From 21st February to 27th June] (It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.)

Penalty = ₹36,000 x 100% = 36,000

Alternative 2- Where amount of ₹ 12 lakh is assumed to be the suppressed amount of tax Tax, interest and penalty payable before the issue of the SCN:

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

Tax payable = ₹ 12,00,000

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

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

OR

Interest = ₹ 12,00,000 × 18% × 59/365 = ₹ 34,915 (rounded off) [From 21st February to 20th April] (It has been assumed that suppression activity has taken place in January and the same has been reported in the turn/statement/report filed in the month of February and thus, interest would become payable

from 21st February in this case.) Penalty = ₹ 12,00,000× 15% = ₹ 1,80,000

Tax, interest and penalty payable after the adjudication order:

In case of short payment of tax by reason of suppression of facts, if the taxpayer pays

Tax payable = ₹ 2,00,000

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

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

OR

Interest = ₹ 2,00,000 × 18% × 127/365 = ₹ 12,526 (rounded off) [From 21st February to 27th June] (It has been assumed that suppression activity has taken place in January and the same has been reported in the return/statement/report filed in the month of February and thus, interest would become payable from 21st February in this case.)

Penalty = ₹ 2,00,000

15. Mr. Jagjeevan has filed Form GSTR 3B after the due date prescribed for filing it. The adjudicating authority is of the opinion that penalty has to be levied under section 73(9) & (11) of the CGST Act, 2017 and has decided to pass an order for levying penalty of 10% of the tax or ₹ 10,000, whichever is higher, on the grounds that amount collected as tax has not been paid within a period of 30 days from the due date of payment of tax. Discuss the decision of the adjudication authority as to its correctness or otherwise. Also, discuss the law of limitation period for issuing the show cause notice and passing the adjudication order under section 73 of the CGST Act, 2017. (PAST EXAM NOV 2020)

Answer:

The decision of the adjudicating authority is not correct in law. The provisions of section 73(11) of the CGST Act, 2017 can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid. Thus, penalty under the provisions of section 73(11) is not payable in such cases although a general penalty may be imposed since the tax has been paid late in contravention of the provisions of the CGST Act, as clarified vide Circular No. 76/50/2018 GST dated 31.12.2018.

The time-limit for issuance of SCN is 2 years and 9 months and time-limit for passing the adjudication order is within 3 years from:

(i) the due date of filing annual return for the financial year to which the demand pertains or

(ii) the date of erroneous refund, as the case may be.

16. Raksha 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 Raksha Enterprises advised it that the amount mistakenly collected by Raksha Enterprises representing as tax was not required to be deposited with Government. Raksha Enterprises has approached you for seeking the advice on

the same. You are required to advise it elaborating the relevant provisions. (5 Marks April 22) (6 Marks MTP April 19)

Answer:

The provisions of section 76 of the CGST Act, 2017 make it mandatory on Raksha Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 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 no tice 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 of the CGST Act, 2017. 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.

17. In the month of March 2021, during the course of Departmental GST audit under section 65 of the CGST Act, 2017 of Always Right Private Limited, audit team observed that input tax credit claimed by the company was blocked under section 17(5) of the CGST Act, 2017. Audit memo was given to the company for submission of reply on the audit observations mentioned in the memo. Company submitted its reply contending that the said credit was not blocked under section 17(5) and had been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice under section 74 of the CGST Act, 2017 and transferred the matter to adjudicating officer and also started recovery process under sections 78 and 79 of the CGST Act, 2017 for recovery of the input tax credit wrongly availed.
You are required to comment whether action of the Department to recover the amount is justified with the reference to the legal provisions of the GST law. (4 Marks PP Dec '21)

Answer :

The action of the Department to initiate the recovery proceedings without adjudication order being passed is not valid.

Recovery proceedings can be initiated under GST law if a taxable person fails to pay any amount payable in pursuance of an order passed under this law within a period of 3 months (or reduced period by proper officer) from the date of service of such order.

However, in the given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer. The adjudication order has not yet been passed in the given case.

18. M/s. Square & Co. received a notice under section 74(1) of the CGST Act, 2017 demanding tax, interest and penalty on the allegation of suppression of facts for the financial year 2018-19. Notice was issued on 24-11-2022. Square & Co. filed an appeal denying any suppression and on which Appellate Authority concluded that the notice is not sustainable under section 74(1), for the reason that the charges have not been established by the Department. Proper officer deemed the said notice

to have been issued under section 73(1) and re-determined the demand.

Square & Co. is of the opinion that the action of proper officer is not in line with GST law. Square & Co. filed its annual return for the financial year 2018-19 on 30-11-2019. Assume the due date of such return as 31-12-2019.

Square & Co. seeks your advice with reason on the following issues:

(i) Whether the proper officer can proceed to re-determine the demand under section 73(1), in respect of notice issued under section 74(1)?

(ii) If yes, whether the fresh demand is valid?

(iii) If the above notice issued under section 74(1) is assumed to have been issued on 24-09-2022, what would be your answer for the validity of demand? (4 Marks) (NOV 2023)

Answer:

(i) Since the appellate authority concluded that the notice under section 74(1) is not sustainable for reason that the charges of fraud etc. have not been established by Department against M/s Square & Co., the proper officer can re-determine the demand, deeming as if the notice was issued under section 73(1) of the CGST Act, 2017.

(ii) Fresh demand will not be valid since show cause notice under section 74(1) of the CGST Act, 2017 was issued on 24.11.2022, i.e., beyond 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, i.e., 30.09.2022.

(iii) If show cause notice under section 74(1) of the CGST Act, 2017was issued on 24.09.2022, i.e., within 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, demand would be valid.

19. Describe the provision of payment of tax and other amount in instalment under section 80 of the CGST Act, 2017. Also discuss, under what circumstances such payment facility shall not be allowed. (6 Marks) (NOV 2024)

Answer:

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, allow payment of tax and other amounts due by such person in maximum 24 monthly instalments, on payment of interest and subject to prescribed conditions and limitations.

If there is default in payment of any one instalment on due date, then the whole outstanding balance shall become due and payable immediately. The facility of payment in instalments shall not be allowed where –

(a) the taxable person has already defaulted on the payment of any amount under the GST law, for which the recovery process is on.

(b) the taxable person has not been allowed to make payment in instalments in the preceding financial year.

(c) the amount for which instalment facility is sought is less than Rs. 25,000. (d) the amount payable is self-assessed tax.

20. Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand notice under GST law of Rs. 50 lakh is served on him on 5th April. On 10th April, despite having knowledge of said notice, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of Rs. 2 lakh without taking any permission from the authorities under GST. The value for the purpose of stamp duty valuation was Rs. 80 lakh.

Subsequently, he filed a reply to said demand notice on 15th April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation.

Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST law.

(5 Marks) (MTP May 2023)

Answer

Section 81 of the CGST Act, 2017 stipulates that where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

In view of the above provisions, in the given case, transfer of property by Mr. Arihant to his wife Soma is void and the property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

21. 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.

(5 Marks) (MTP Nov 2023)

Answer

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 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.

22. Discuss the validity of the following independent cases under the provisions of CGST Act, 2017:

(i) CGST officer had issued a notice under section 74(1) of the CGST Act, 2017 against which appeal was preferred by the

assessee. Appellate Authority concluded that the notice issued under section 74(1) of the CGST Act, 2017 was not sustainable for the reason that charges of fraud had not been established. Now the officer wishes to determine the tax payable by treating the said notice as if it was issued under section 73(1) of the CGST Act, 2017. Is the action of the officer valid?

(ii) CGST officer issued an adjudication order which did not specify payment of interest on the tax short paid by the registered person. So, the assessee contends that interest cannot be demanded as the said order is silent on the same. Is the contention of the assessee correct?

(5 Marks) (MTP Nov 2024)

Answer

(i) Valid. As per section 75 of the CGST Act, 2017, if the Appellate Authority concludes that the notice issued under section 74(1) of the CGST Act, 2017 is not sustainable for the reason that the charges of fraud has not been established, the proper officer can determine the tax payable by deeming as if the notice was issued under section 73(1).

(ii) Incorrect. As per section 75 of the CGST Act, 2017, the interest on the tax short paid or not paid shall be payable whether or not the same is specified in the order determining the tax liability.

23. List the cases, in which transfer of property to be void specified under section 81 of the CGST Act, 2017.

(4 Marks) (MTP May 2025)

Answer

In accordance with section 81 of the CGST Act, 2017, where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

20 LIABILITIES

Multiple Choice Questions

1. Mr. Sohan, a registered person under GST, was the proprietor of M/s Food Paradise Restaurant. He died and left behind his wife and son, on 15th August.

   His son – Mr. Rohan – wants to continue the business of the deceased father.
   The GST consultant of M/s Food Paradise Restaurant gives advice to Mr. Rohan as to how he can continue the business of his deceased father.
   Which of the following options is correct in accordance with the provisions of GST law?
   (a) Mr. Rohan should apply for a new registration under GST in the name M/s Food Paradise Restaurant under his own PAN w.e.f. the date of succession and file Form GST ITC 02 for transfer of ITC to the new entity.
   (b) Mr. Rohan can get the authorized signatory changed by approaching to the Proper Officer and can continue the same business.
   (c) Mr. Rohan should close the old firm and start new business under different name.
   (d) Mr. Rohan should do the business with his mother as the new proprietor of the M/s Food Paradise Restaurant, and Mr. Rohan should act as a Manager. (1 Mark MTP April 22, Oct'21)

Answer: (a)

Theory

2. 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.

Answer:
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.

3. In the question 2. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.

Answer:

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.

4. Discuss the liability to pay tax in case of an amalgamation/merger, under section 87. (RTP NOV 2018) (RTP NOV 2019)

Answer:

Section 87 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.

5. With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax? (MTP MAY 2018, PP May 2022)

Answer:

Section 90 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.

6. Explain the provisions relating to liability for GST in case of company in liquidation (section 88). (PAST EXAM MAY 2018) (MTP NOV 2018)

Answer:

The provisions relating to liability for GST in case of company in liquidation provided under section 88 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.

Practical Theory

7. 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.

Answer:

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.

8. **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.**

Answer:

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.

9. **M/s X Pvt Ltd. (with 3 directors A, B & C) decided to wind up its affairs on 1st August after suffering losses. It appoints Mr. CA as liquidator on 15th August. You are required to answer the following:**

   (a) liquidator is required to inform to the Commissioner about his appointment if so, within which period?

   (b) Commissioner is required to specify the liability of the company if so, within which period and to whom he has to inform?

   (c) Who is liable to pay GST dues and what is the time limit?

   (d) If A & B unable to pay GST liability, then who is liable to pay?

Answer:

(a) Mr. CA must then inform the Commissioner regarding his appointment within 30 days, i.e., on or before 14thSeptember.

(b) The Commissioner informs the liquidator within 3 months from the date of receipt of intimation from liquidator, that M/s X Pvt Ltd. owes taxes for tax period. Let us assume the Commissioner intimated tax dues on 20th November.

(c) M/s X Pvt Ltd. has 3 months to pay, i.e., till 20th February 2018. However, the company fails to pay. In this case, the 3 directors A, B & C will be held liable to pay the full amount.

(d) If A & B fail to pay, then C alone will have to pay entire due. However, if C proves that the non-payment of taxes was not due to his personal negligence, then he will be exempt from the liability of paying the company's taxes.

10. **Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand notice under GST law of ₹ 50 lakh is served on him on 5th April. On 10th April, despite having knowledge of said notice, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of ₹ 2 lakh without taking any permission from the authorities under GST. The value for the purpose of stamp duty valuation was ₹ 80 lakh. Subsequently, he filed a reply to said demand notice on 15th April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation.**

    Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST law. (5 Marks MTP April '23)

Answer:

Section 81 of the CGST Act, 2017 stipulates that where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

In view of the above provisions, in the given case, transfer of property by Mr. Arihant to his wife Soma is void and the property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

11. With reference to provision of section 93(1) of the CGST Act, 2017, discuss the liability to pay tax, interest or penalty on death of a person so liable. (4 Marks) (NOV 2023)

Answer:

Where a person, liable to pay tax, interest or penalty under the CGST Act, 2017 dies, then—

(i) 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 the CGST Act, 2017; and

(ii) 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 CGST Act, 2017, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

The successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

12. 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/ lGST/ SGST Act. (4 Marks) (MTP May 2025)

Answer

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].

13. TFT Private Ltd. has been declared insolvent by the order of court and the same company is going under liquidation process. Advise the directors of that company about the provisions relating to liability for GST in case of company in liquidation.

(6 Marks) (MTP May)2025

Answer

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.

21 OFFENCES AND PENALTIES

Multiple Choice Questions

1. D & Co., registered under GST in Rajasthan, issued an invoice of ₹ 5,00,00,000 (excluding GST) to P & Co. without supplying any goods or services, at the advice of its accountant – Mr. Sunil. GST @ 18% was charged in this invoice. P & Co. availed the ITC on the basis of said invoice and utilised it in the same month. Determine the amount of penalty leviable in this case.
   (a) D & Co.: ₹ 90,00,000; P & Co.: ₹ 90,00,000; Mr. Sunil: Nil
   (b) D& Co.: ₹ 90,00,000; P & Co.: ₹ 90,00,000; Mr. Sunil: ₹ 90,00,000
   (c) D& Co.: Nil; P & Co.: Nil; Mr. Sunil: ₹ 90,00,000
   (d) D & Co.: ₹ 10,000; P& Co.: ₹ 10,000; Mr. Sunil: Nil (2 Marks MTP March 22)

Answer: (b)

2. '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 with an intention to evade payment of tax due and has not maintained proper records. In this regard, which of the following statements is true? Choose the most correct option.
   (a) 'X' is punishable with imprisonment up to 6 months or with fine or both and the said offence is bailable.
   (b) 'X' is punishable with imprisonment up to 1 year or with fine or both and the said offence is bailable.
   (c) 'X' is punishable with imprisonment up to 1 year or with fine or both and the said offence is not bailable.
   (d) 'X' is punishable with imprisonment up to 6 months or with fine or both and the said offence is not bailable. (2 Marks MTP March '23)

Answer: (a)

Theory

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. (MTP MAY 2018)

Answer:

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 penalty equal to 200% 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 Rs.25,000/- whichever is less.

Where owner does not come forward: – Such goods shall be released on payment of the penalty equal to 50% of value of goods or 200% of taxes whichever is higher or upon furnishing of security equivalent to the said amount. In case of exempted goods, penalty is 5% of value of goods or Rs. 25,000/- whichever is less.

4. Elaborate about cognizable and non-cognizable offences under the CGST Act, 2017. What is the difference between these two while exercising powers by the GST authorities? (PAST EXAM JAN 2021)

Answer:

All offences specified under section 132 except the offences that are cognizable and non-bailable (as mentioned below) are non - cognizable offences under the CGST Act, 2017.

Cognizable offences under the CGST Act, 2017 are the following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken more than (exceeding) ₹ 5 crores, namely:

(a) Supply without issue of any invoice, in violation of provisions of GST, with intention to evade tax;

(b) Issue of any invoice/bill without any supply in violation of the provisions of GST law leading to wrongful availment or utilisation of ITC/refund of tax;

(c) Avails ITC using such invoice/bill referred to in clause (b);

(d) Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due; In case of a cognizable offence, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

In case of a non-cognizable offence, the arrested person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

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.

Practical Theory Questions

5. 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?

(PAST EXAM NOV 2019)

Answer:

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.

6. 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?

Answer:

The levy of pOenalty 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.

7. 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 excluding 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. (PAST EXAM MAY 2018) (MTP NOV 2018

Answer:

(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

8. 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 (Rs.)
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 Rs. 30,00,000?

Answer:

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 penalty equal to 100% of the value of the goods or 200% of the Taxes whichever is higher.[Assuming the taxes given here are IGST]

Therefore, in the given case, the amount payable

= [100% of Rs. 30,00,000 or 200% of 540,000- whichever is higher]= Rs. 30,00,000

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 Rs. 25,000, whichever is less.

= 5% of Rs. 30,00,000 or Rs. 25,000, whichever is less

= Rs. 1,50,000 or Rs. 25,000, whichever is less

= Rs. 25,000 per Act. If its IGST, it will be 50,000

[Refer latest provisions]

9. 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. (RTP NOV 2018)

Answer:

(a) (i) In case of goods liable for confiscation, 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

(ii) 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

10. (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. (MTP NOV 2020)

Answer:

(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.

(iii) Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Sagar, in the given case.

11. 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.

Answer:

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.

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

12. Neurological Systems Private Limited has been subject to confiscation of goods on the ground that it has not accounted for the goods that are liable to tax under the CGST Act, 2017. The directors would like to know from you as to how such goods are to be released from the Department. You are required to advise the directors regarding the provisions of law on this matter.

(PAST EXAM NOV 2019)

Answer:

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

Neurological Systems Private Limited shall get an option to pay redemption fine in lieu of confiscation. Such fine should be less than or equal to ≤ [Market value of goods confiscated – Tax chargeable thereon] Aggregate of such fine and penalty leviable should be more than or equal to ≥ Amount of penalty leviable under section 129(1) of the CGST Act, 2017.

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

13.

(i) Nirmal Private Limited, registered in Vasai, Maharashtra, is engaged in supply of taxable goods and services. In the month of April, it sold goods worth ₹ 5,00,000 (excluding GST) to Suraksha Enterprises and collected tax @ 28% on said goods from the buyer. However, the actual rate of tax appliable in the given case was 18%.
Nirmal Private Limited deposited the tax @ 18% on these goods to the Government on the due date and retained the remaining tax collected. Determine the amount of penalty, if any, that may be imposed on Nirmal Private Limited in the month of October in the given case ignoring interest payable, if any.

(ii) Bindusar, Chief Executive Officer of Ashoka Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Bindusar, if he fails to appear before the central tax officer. (RTP NOV 21)

Answer:

(i) Section 122(1)(iv) of the CGST Act, 2017 stipulates that a taxable person who collects any tax in contravention of the provisions of the CGST Act, but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due shall be liable to pay a penalty of:

(a) ₹ 10,000

or

(b) an amount equivalent to the tax evaded whichever is higher.

In the given case, since Nirmal Private Limited has collected tax at a wrong rate (i.e. 28%), but fails to deposit the full tax collected to the Government i.e. it deposits only tax @ 18% thereby retaining the remaining tax collected, the amount of penalty that can be imposed on Nirmal Private Limited is as follows:

(a) ₹ 10,000

or

(b) an amount equivalent to the tax evaded [₹ 50,000 (₹ 5,00,000× 28%) – (₹ 5,00,000× 18%)], whichever is higher, i.e. ₹ 50,000.

(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 Bindusar, in the given case.

14. Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period November 2017:

(i) 'Ram' avails input tax credit of Rs. 162 lakh without actual receipt of excisable goods. However, he is yet to utilize the same (i.e. Yet to confirm this credit in his GSTR-2A return).

(ii) 'Rahim' willfully evades payment of tax of Rs. 275 lakh.

(iii) 'Robert' fails to supply information sought by the Central Tax Officer. The amount of GST involved is Rs. 8 lakh.

(iv) 'Lakshman' collects Rs. 585 lakh as tax from its clients but deposits only Rs. 25 lakh with the Central Government.

(v) 'Karthik' collects Rs. 265 lakh as IGST from its clients and deposits Rs. 261 lakh with the Central Government by falsifies or substitutes financial records or produces fake accounts or documents.

What will be the prosecution implications, if Rahim,Robert, Lakshman and Karthik are convicted for subsequent offences?

Answer:

Person	Offence	Prosecution	Arrest	Bail
'Ram'	No offence. Because utilization of ITC not confirmed in his return GSTR-2A	Not applicable	Not applicable	Not applicable
'Rahim'	Non-cognizable offence [Section 132(1)(e)]	Upto 3 years with fine [Section132(1)(ii)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable offence [Section 132(4)]
'Robert'	Non-cognizable offence [Section 132(1) (k)]	Not applicable [since, tax evasion not exceeds Rs 100 lakh]	No Arrest can be ordered by Commissioner of Central Tax.	Not applicable
'Lakshm an'	Cognizable offence [Section 132(1)(a)]	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax without arrest warrant	Non-Bailable Offence [Section 132(5)]
'Karthik'	Non-cognizable offence [Section 132(1)(f)]	Upto 6 months or with fine or with both [section 132(1)(iv)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]

If Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences:

Person	Prosecution for subsequent offences [Section 132(2) of the CGST Act, 2017]
'Rahim'	Imprisonment upto 5 years with fine
'Robert'	Imprisonment upto 5 years with fine
'Lakshman'	Imprisonment upto 5 years with fine
'Karthik'	Imprisonment upto 5 years with fine

15. State the types of offence (cognizable or non-cognizable), prosecution, arrest and bail implications, if any, in respect of the following independent cases pertaining to June:

(i) 'Bhaskar' fraudulently avails input tax credit of ₹ 200 lakh without any invoice or bill. However, he is yet to utilize the same.

(ii) 'Raghav' fraudulently obtains the refund of tax of ₹ 550 lakh. The said tax has been recovered from the buyer also.

Note: Assume that in above cases, offence, if any, has been committed for the first time. (4 Marks MTP Sep 22)

Answer:

Person	Offence	Prosecution	Arrest	Bail
'Bhaskar'	Non- cognizable offence [Section 132(1)(c) read with section 132(4)]	Upto 1 year and with fine [Section 132(1)(c)(iii)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Raghav'	Non- cognizable offence [Section 132(1)(e) read with section 132(4)]	Upto 5 years and with fine [Section 132(1)(e)(i)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]

16. M/s Fly-by-Night Traders, a taxable person, issued an invoice on 15th April 2021 involving input tax credit (ITC) of ₹ 25 lakh to M/s Runaway Traders who utilised the same. No supply of goods was involved in this transaction between the two traders. M/s Fly-by- Night Traders conducted this transaction at the instance of its tax consultant who was not a qualified professional. Explain the relevant provision in brief and determine the amount of penalty leviable under CGST Act, 2017, if any, on the persons involved in respect of the above referred transaction. (5 Marks PP Dec '21)

Answer:

Where a taxable person:

(i) issues any invoice without supply of goods, or

(ii) takes/utilises ITC without actual receipt of goods, either fully or partially, in contravention/violation of the provisions of the GST law or the rules made thereunder, such person shall be liable to pay a penalty of

(a) Rs. 10,000

or

(b) an amount equivalent to the ITC availed of or passed on (Rs. 25 lakh), whichever is higher.

Thus, M/s Fly-by-Night Traders and M/s Runaway Traders, both are liable to pay a penalty of Rs. 25 lakh each.

Further, any person at whose instance above transactions are conducted, shall be liable to a penalty of an amount equivalent to ITC availed of/passed on. Thus, the tax consultant will be liable to pay a penalty of Rs. 25 lakh.

17. Comet Chem of Ahmedabad handed over goods to transporter Ram Roadways to carry the same from Ahmedabad to Bharuch in Gujarat.

The value of the goods is ₹ 80,000 which is chargeable to tax @ 18% GST (9% SGST + 9% CGST) and in transit, proper officer intercepted the vehicle under section 68 of CGST Act and seized the goods.

Calculate the penalty payable under section 129 of CGST Act, 2017 for release of the goods:

- If Comet Chem, owner of goods, comes forward for payment of penalty.
- If Comet Chem, owner of goods, does not come forward for payment of penalty. (4 Marks PP Nov 22)

Answer:

When Comet Chem. - owner of goods - comes forward for the payment of penalty, penalty payable under section 129 of CGST Act is 200% of the tax payable on such goods, i.e., ₹ 14,400 [200% of (₹ 80,000 × 9%)].

i.e. ₹ 14,400

When Comet Chem. - owner of goods - does not come forward for the payment of penalty, penalty payable under section 129 of CGST Act is higher of:

(i) 50% of value of goods, i.e., ₹ 40,000 (50% of ₹ 80,000) or

(ii) 200% of the tax payable on such goods, i.e., ₹ 14,400 [200% of (₹ 80,000 × 9%)]. i.e. ₹ 40,000

18. Adinath Private Limited, registered under GST in the State of Uttar Pradesh, instructed Ashok Transporters to deliver certain taxable goods to Mahavir Enterprises in Maharashtra on 10th January 2022. The value of the goods is ₹ 6,80,000 which are chargeable to GST @ 18% IGST. While the goods were in transit, proper officer intercepted the goods and the truck in which goods were being transported, under section 68. However, the driver of the truck failed to tender any document in relation to the goods in movement. The proper officer, after conducting the physical verification of the goods and the truck, decided to seize the goods and the truck and issued a notice under section 129(3) specifying the penalty payable by Adinath Private Limited after giving it an opportunity of being heard.

You are required to determine the amount of penalty payable if Adinath Private Limited does not come forward for the payment of penalty. Further, discuss the suitable course of action for Ashok Transporters if it intends to get its truck released. (RTP Nov'22)

Answer:

As per section 129(1)(a), when owner of goods does not come forward for payment of tax and penalty or for payment of penalty, detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents are released on payment of penalty equal to higher of the following:

(i) 50% of value of goods or

(ii) 200% of the tax payable on such goods

In view of the same, the amount of penalty payable if Adinath Private Limited does not come forward for the payment of penalty is as follows:

(i) 50% of value of goods [Rs. 3,40,000 (50% of Rs. 6,80,000)]

or

(ii) 200% of the tax payable on such goods [Rs. 2,44,800 (200% of ₹ 6,80,000 × 18%)] whichever is higher, i.e. Rs. 3,40,000. As per first proviso to section 129(6), conveyance shall be released on payment by the transporter the penalty as mentioned in the order or Rs. 1 lakh, whichever is less.

In the given scenario, since the owner - Adinath Private Limited has failed to come forward to make payment of penalty, penalty of ₹ 3,40,000 shall be levied. Further, the transporter of goods can get its truck released upon payment of the lower of the following:

(i) penalty as mentioned in the order [Rs. 3,40,000]

(ii) Rs. 1,00,000

Hence, Ashok Transporters can get its truck released upon payment of Rs. 1,00,000.

Other ICAI Module Questions

19. What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?

Answer:

Section 122(1) provides that any taxable person who has committed any of the specified 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 Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

(i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of Rs. 10,000 or 10% of the tax due from such person, whichever is higher.

(ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to Rs. 10,000 or the tax due from such person, whichever is higher.

20. M/s Blue Berry Traders, a registered person under GST, issued a tax invoice on 1st August, 2022 to M/s Blue Lagoon Traders without any underlying supply of goods or services amounting to Input Tax Credit (ITC) involved of Rs. 30 lakh.

M/s Blue Lagoon Traders avails ITC on the basis of the said tax invoice. The department issued a show cause notice to M/s Blue Lagoon Traders on 1st April, 2023 specifying the amount of tax along with interest payable thereon u/s 50 and applicable penalty. M/s Blue Lagoon Traders paid the amount of tax along with interest payable thereon u/s 50 specified in the show cause notice on 15th April, 2023 and also along with applicable penalty.

Explain the relevant provision in brief and determine the amount of penalty to be paid by M/s Blue Berry Traders and M/s Blue Lagoon Traders under CGST Act, 2017 in respect of above referred transaction.

(4 Marks)(MAY 2023)

Answer:

Since M/s Blue Berry Traders issued an invoice without any supply of goods or services in violation of the provisions of GST law, it shall be liable to pay a penalty of higher of the following-

(a) Rs. 10,000 or

(b) Amount of ITC passed on,

So, in given case, penalty is higher of:

(a) Rs. 10,000, or

(b) Rs. 30 lakh

i.e., Rs. 30 lakh

each under CGST and SGST

Where any person chargeable with tax due to wrongful availment and utilization of ITC by reason of fraud etc. pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded .

Thus, M/s Blue Lagoon Traders has to pay penalty of Rs. 7,50,000 (Rs. 30 lakh x 25%) each under CGST and SGST.

21. M/s. Root & Co. filed a refund application under section 54 of the CGST Act, 2017 in respect of export made by them. While declaring the export turnover, their accountant included the exempt turnover also as part of export turnover and claimed excess refund. Amount of refund excess claimed was Rs. 18,000 each under CGST and SGST.

Determine the total amount of penalty (CGST + SGST) leviable under GST law in respect of such erroneous refund if:

(i) such excess refund claim was proved to be inadvertent and not wilful/fraud.

(ii) such excess refund was on account of wilful misstatement/ fraud. (5 Marks) (NOV 2023)

Answer:

Amount of penalty (each under CGST and SGST) in respect of the erroneous refund claimed by M/s Root & Co.:

(i) **Where the excess refund claim was proved to be inadvertent and not wilful/fraud**

Penalty payable will be higher of the following:

(a) 10% of tax due, i.e., Rs. 1,800 (18,000 x 10%)

(b) Rs. 10,000

Penalty will be Rs. 10,000 each under CGST and SGST

(ii) **Where the excess refund claim was on account of wilful misstatement/fraud** Penalty payable will be higher of the following:

(a) Tax due, i.e., Rs. 18,000

(b) Rs. 10,000

Penalty will be Rs. 18,000 each under CGST and SGST

22. Swastik Tours and Travel is registered taxable person under GST in the State of Punjab. Its gross receipts from the overseas package tours for the month of February 2024 amounted to Rs. 50 crore. Out of this Rs. 50 crore, Rs. 10 crore was received from registered persons. While filing GSTR-1 for the month-of February 2024, it tampered the amount of invoices issued to unregistered persons and reported only Rs. 20 crore on account of B to C transactions (i.e., transaction with unregistered persons), thus, understating the tax liability by Rs. 3.60 crore (i.e., 18% of 20 crore). Moreover, while filing GSTR-3B for the same month, it availed ITC of Rs. 0.40 crore on account of fake invoices received without receipt of goods/services.

GST Department initiated prosecution proceedings against Swastik Tours and Travel for the above offence.

Swastik Tours and Travel deposited the amount of tax due along with the interest and penalty and Rs. 1 crore as compounding amount being amount equivalent to 25% of tax evaded and requested the commissioner for compounding of offence. Other conditions required for compounding the amount were duly complied with.

Even then commissioner rejected the request of Swastik Tours and Travel on the plea that compounding amount deposited by Swastik Tours and Travel is less than the minimum amount to be deposited for compounding of offence.

You are required to examine the case and comment upon the rejection of request of Swastik Tours and Travel as per the provisions of section 138 of the CGST Act, 2017 read with relevant rule of the CGST Rules, 2017.

Also discuss the relevant legal provision in brief.

(5 Marks) (NOV 2024)

Answer:

In the given case, Swastik Tours and Travel has committed the following offences:

- Availing of ITC using the fake invoices received without receipt of goods/services
- Falsification or substitution of financial records with an intention to evade payment of tax due or evasion of tax

Here, the amount of tax evaded/ITC wrongly availed is Rs. 4 crores (Rs. 3.60 crore + Rs. 0.4 crore), i.e. it exceeds Rs. 2 crore but does not exceed Rs. 5 crore.

Further, where the offence committed by the person falls under more than one category, the compounding amount shall be the amount determined for the offence for which higher compounding amount has been prescribed.

Thus, the compounding amount will be as follows:

- For the offence of availing of ITC using the fake invoices received without receipt of goods/services, compounding amount is 40% of the amount of ITC wrongly availed.
- For the offence of falsification or substitution of financial records with an intention to evade payment of tax due or evasion of tax, compounding amount is 40% [higher of 25% or 40%] of the amount of tax evaded].

Thus, Swastik Tours and Travel should have deposited the following amount of tax evaded/ITC wrongly availed as the compounding amount:

= 40% of Rs. 4 crore

= Rs. 1.60 crore

Since Swastik Tours and Travel has deposited lesser compounding amount than required, the rejection of its request for compounding by the Commissioner is justified.

23. List the scenarios where goods or conveyances are liable to confiscation under section 130 of the CGST Act, 2017.

(RTP MAY 2025)

Answer:

As per section 130, where any person—

(i) supplies or receives any goods in contravention of any of the provisions of GST law or the rules made thereunder with intent to evade payment of tax;

(ii) does not account for any goods on which he is liable to pay tax under GST law; or

(iii) supplies any goods liable to tax under GST law without having applied for registration; or

(iv) contravenes any of the provisions of GST law or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of GST law or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

24. A show cause notice was issued to Shubhgrah Furnishers, Surat, a registered supplier, pursuant to an audit conducted by the tax authorities under section 65 of the CGST Act, 2017, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Shubhgrah Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Shubhgrah Furnishers on 22nd August) confirming a tax demand of Rs. 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122 of the CGST Act.

Shubhgrah 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:

(i) Can Shubhgrah 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?

(ii) Does Shubhgrah Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?

(5 Marks) (MTP May 2023)

Answer

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. Thus, Shubhgrah 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. Thus, Shubhgrah Furnishers can file the appeal to Appellate Authority on or before 22nd November. 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.

2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and *vice versa*. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.

   GST law also 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 (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Shubhgrah Furnishers is required to file an appeal only with the Central Tax Appellate Authority.

25. When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.

(4 Marks) (MTP Nov 2023)

Answer

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.

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 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

26. Robecco Private Limited, registered under GST in the State of Uttar Pradesh, instructed Sambhav Transporters (Uttar Pradesh) to deliver certain taxable goods to ABC Enterprises in Uttar Pradesh on 10th January. The value of the goods is ₹ 6,80,000 which are chargeable to CGST & SGST@ 9% each. While the goods were in transit, proper officer intercepted the goods and the truck in which goods were being transported, under section 68 of the CGST Act, 2017. However, the driver of the truck failed to tender any document in relation to the goods in movement. The proper officer, after conducting the physical verification of the goods and the truck, decided to seize the goods and the truck and issued a notice under section 129(3) of the CGST Act, 2017 specifying the penalty payable (under CGST and SGST each) by Robecco Private Limited after giving it an opportunity of being heard.

You are required to determine the amount of penalty payable (under CGST and SGST each) if Robecco Private Limited does not come forward for the payment of penalty. Further, discuss the suitable course of action for Sambhav Transporters if it intends to get its truck released.

(5 Marks) (MTP May 2024)

Answer

As per section 129 of the CGST Act, 2017, when owner of goods does not come forward for the payment of penalty, detained/seized goods and conveyance (used as a means of transport for carrying said goods) and related documents are released on payment of penalty equal to higher of the following:

(i) 50% of value of goods or

(ii) 200% of the tax payable on such goods.

In view of the same, the amount of penalty payable (each under CGST and SGST) if Robecco Limited does not come forward for the payment of penalty is as follows:

(i) 50% of value of goods [Rs. 3,40,000 (50% of Rs. 6,80,000)]

or

(ii) 200% of the tax payable on such goods [Rs. 1,22,400 (200% of ₹ 6,80,000 × 9%)] whichever is higher, i.e. Rs. 3,40,000 (each under CGST and SGST).

Conveyance shall be released on payment by the transporter the penalty as mentioned in the order or Rs. 1 lakh, whichever is less.

In the given case, since the owner - Robecco Limited has failed to come forward to make payment of penalty, penalty of ₹ 3,40,000 (each under CGST and SGST) shall be levied.

Further, the transporter of goods can get its truck released upon payment of the lower of the following under the CGST Act, 2017:

(i) penalty as mentioned in the order [Rs. 3,40,000] or

(ii) Rs. 1,00,000

Hence, Sambhav Transporters can get its truck released upon payment of Rs. 1,00,000 (each under CGST and SGST).

27. When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.

(4 Marks) (MTP May 2024)

Answer

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.

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 off.

28. Examine the implications as regards the liability and quantum of punishment on prosecution, in respect of the following cases pertaining to the month of December under CGST Act, 2017-

(i) 'Makkhanlal' 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) 'Kishore' 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 'Makkhanlal' and 'Kishore' for the offences? What

would be the position, if 'Makkhanlal' and 'Kishore' repeat the offences?

It may be assumed that offences are proved in the Court.

(5 Marks) (MTP May 2025)

Answer

(i) Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1) of the CGST Act, 2017.

In the present case, failure to deposit the tax Rs. 4 lakh (Rs. 245 lakh - Rs. 241 lakh). As the amount of failure does not exceed Rs. 200 lakh therefore, failure to deposit Rs. 4 lakh collected as tax by Makkhanlal' will not be punishable with imprisonment as per section 132(1) of the CGST Act, 2017.

Further, falsification of financial records by 'Makkhanlal' is a specified offence as per section 132(1)(d) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

(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) read with clause (i) of section 132(1) of the CGST Act, 2017.

Since the amount of tax evaded by 'Kishore' exceeds Rs. 500 lakh (Rs. 550 lakh -Rs. 30 lakh), 'Kishore' is punishable with an imprisonment for a term which may extend to 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.

Such offence is non-bailable in terms of section 132(5) of the CGST Act, 2017.

If 'Makkhanlal' and 'Kishore' 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 of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

22 APPEAL AND REVISION

Multiple Choice Questions

1. An appeal to the High Court can be filed under the CGST Act, 2017 in the following cases:
   (i) By a person aggrieved against the order passed by the State bench or Area bench of the Appellate Tribunal
   (ii) By a person aggrieved against the order passed by the National bench or Regional bench of the Appellate Tribunal
   (iii) For a matter involving substantial question of law Choose the most appropriate option.
   (a) and (ii)
   (b) and (iii)
   (c) and (iii)
   (d) (i), (ii) and (iii) (2 Marks MTP Sep 22)

Answer: (b)

2. The adjudicating authority passed the order on 23rd January 2022 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the Appellate Authority (hereinafter referred as AA) on 16th February 2022. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1st May 2022 and 30th June 2022. Which of the following statements is true in this regard?
   (a) AA can pass the order by 16th February 2023.
   (b) AA can pass the order by 18th April 2023.
   (c) AA can pass the order by 16th August, 2022.
   (d) AA can pass the order by 18th October, 2022. (2 Marks MTP March '23)

Answer: (b)

Theory

3. With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings? (MTP NOV 2018)

Answer:

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 arising from the impugned order, subject to a maximum of Rs. 20 crore.

Section 112(8) lays down that no appeal can be filed before the Appellate 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; and

(b) 10% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of Rs. 40 crore, in relation to which appeal has been filed.

The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.

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.

4. **With reference to the provisions of section 121, specify the orders against which no appeals can be filed. (RTP MAY 2019, MTP Oct 2022, MTP March 2023)**

Answer:

As per section 121, 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; or

(d) an order passed under section 80 (payment of tax in instalments).

5. **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? (PAST EXAM NOV 2018)**

Answer:

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.

Practical Theory

6. **In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of Rs. 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act 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, determine the amount of pre-deposit to be made by the company for filing the said appeal. (RTP NOV 2019)**

Answer:

Section 107(6) read with section 20 of the IGST Act 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 Rs. 40 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed Rs. 40 crore (for tax in dispute) where IGST demand is involved 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) Rs. 28 crore [10% of the amount of tax in dispute, viz. Rs. 280 crore] or

(ii) Rs. 40 crore, whichever is less. = Rs. 28 crore.

Further, section 112(8) 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 10% 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 Rs. 40 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) Rs. 28 crores [10% of the amount of tax in dispute, viz. 280 crores] or

(ii) Rs. 40 crores, whichever is less.

= Rs. 28 crores. In addition to the pre deposit earlier makes the total pre-deposit Rs. 56 Crores.

7. 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.

(MTP JULY 2021) (MTP MAY 2020)

Answer:

As per section 117(1), an appeal against orders passed by the State Bench or Area Benches of the Tribunal would lie 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 would lie 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.

8. Pursuant to audit conducted by the tax authorities under section 65, 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. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of Rs. 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122.

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. (MTP MAY 2018)

Answer:

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)]. 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)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. 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 to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.

GST law also 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 (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. 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) 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 Rs. 20 crore*.

*Equivalent amount is required to be deposited with respect to SGST liability.

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 Rs. 50,00,000 which is Rs. 5,00,000 (i.e. Rs. CGST 2,50,000 and SGST Rs. 2,50,000).

9. XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:

CGST+SGST due	Rs. 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	Rs. 60,000

The taxpayer filed an appeal before the Appellate Authority on 26th November. Determine the amount of pre-deposit to be made by the company for filing the appeal.

Whether your answer would be different if the taxpayer 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 and proportionate penalty arising from the said order?

(PAST EXAM MAY 2018)

Answer:

(a) Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays*:-

(b) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and

(c) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of Rs. 20 crore, in relation to which the appeal has been filed.

*Equivalent amount is required to be deposited with respect to SGST liability.

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of Rs. 6,00,000, which is Rs. 60,000 (i.e. CGST Rs. 30,000 and SGST Rs. 30,000) assuming that XY Company disagrees with the entire tax demanded.

However, when XY Company admits the liability of only Rs. 2,00,000 (CGST + SGST) and disputes the balance tax demanded of 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.

10. The original adjudicating authority confirmed a demand of GST of ₹ 42,50,000 with interest and imposed a penalty of ₹ 4,25,000 in its order dated 1st March, 20XX. The assessee filed an appeal before appellate authority challenging the demand as well as penalty. The internal audit party, after an audit of the records of the assessee, submitted a note to the Commissioner that actual amount demanded should have been ₹ 48,50,000. While the issue was pending before the appellate authority, based on the note, the Commissioner stayed the order of the original authority and issued a show cause notice on 15th September, 20XX, proposing revision of the order of the original authority and revise the demand on the basis of the audit note. Examine the correctness of the action taken by the Commissioner in accordance with the provisions of GST law.

Answer:

As per section 108 of the CGST Act, 2017, Revisional Authority cannot revise an order if, inter alia, such order has been subject to an appeal before Appellate Authority or Tribunal or High Court or Supreme Court. The Revisional Authority may, however, pass an order on any point which has not been raised and decided in an appeal before Appellate Authority/Tribunal/High Court/Supreme Court.

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

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

Note: It is assumed that the given rectification is not an error which is apparent on the face of record. However, if the rectification is done on the base of error which is apparent on the face of record, Section 161 of CGST Act 2017 shall apply and rectification order may be passed by the commissioner instead of revisionary authority.

11. Briefly examine whether the appeal/review application filed in the following independent cases is within the time limit prescribed under the GST law:

(RTP JULY 2021)

(i) The adjudicating authority issued the adjudication order on 23rd April and the same is communicated to the taxpayer Mr. X - on 28th April. Mr. X, aggrieved by the order of the adjudicating authority filed an appeal to the Appellate Authority on 26th July.

(ii) The adjudicating authority passed the order on 3rd March (communicated same day to the Commissioner). The

Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer filed the review application on 23rd September.

Answer:

(i) A person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority within 3 months from the date of communication of such decision/order.

The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay [Section 107 of the CGST Act, 2017]. In view of the aforesaid provisions, in the given case, the relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) and not 23rd April.

Accordingly, an appeal can be filed by Mr. X to Appellate Authority within3 months from the date of communication of order (28th April), i.e. 28th July. Thus, Mr. X has filed the appeal within the time limit prescribed under the GST law.

(ii) 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 decision/order for the determination of such points arising out of the said decision/ order as may be specified by him.

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 [Section 107 of the CGST Act, 2017]. In the present case, the Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer should have filed the said application till 3rd September (i.e. within 6 months from the date of communication of order). However, the subordinate officer filed the application on 23rd September, i.e. after the expiry of period of 6 months from the date of communication of order. Thus, in the given case, appeal has not been filed within the time limit prescribed under the GST law.

However, Appellate Authority can condone delay in filing of appeal upto 3rd October (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

12. **Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority. While commenting on the decision of Mr. Mahendran, you are also required to state the powers of the Revisional Authority to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017. What is the time period for the Revisional Authority to exercise the power of revision? (RTP NOV 2018) (PAST EXAM NOV 2020)**

Answer:

The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is not valid in law. Any person aggrieved by an order passed against him by RA under CGST Act may appeal to the Appellate Tribunal, the second level of appeal

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

(i) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.

(ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.

(iii) The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order. The RA can revise an order

after the expiry of a period of 6 months from the date of communication of the said order but not later than expiry of a period of 3 years from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

13. Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter- State supply on the basis that the customer is situated in Delhi. However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST. Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority. Advise Anirudh Ltd. regarding the following:

(i) Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?

(ii) Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.

(iii) If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?

(iv) Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.? (PAST EXAM JAN 2021)

Answer:

(i) Yes, Anirudh Ltd. can file an appeal against the order of the first Appellate Authority to the Appellate Tribunal. National Bench/ Regional Benches of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.

(ii) No, Authority can 't insist, because once a valid appeal is filed i.e., on payment of requisite pre- deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed till the disposal of appeal.

(iii) Yes, Anirudh Ltd. can file another appeal against the decision of the National Bench/Regional Bench of the Tribunal, directly before the Supreme Court.

(iv) No, there will be no interest liability on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, is not required to pay any interest on the amount of CGST and SGST payable because there is no shortfall of overall tax amount.

14. A show cause notice was issued to Shubhgrah Furnishers, Surat, a registered supplier, pursuant to an audit conducted by the tax authorities under section 65 of the CGST Act, 2017, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Shubhgrah Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Shubhgrah Furnishers on 22nd August) confirming a tax demand of ₹ 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122 of the CGST Act.

Shubhgrah 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:

(a) Can Shubhgrah 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?

(b) Does Shubhgrah Furnishers need to approach both the Central and State Appellate Authorities for exercising its right

of appeal? (5 Marks MTP March '23)

Answer:

1) (a) 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. Thus, Shubhgrah Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

   (b) Further, such appeal can be filed within 3 months from the date of communication of such decision/order. Thus, Shubhgrah Furnishers can file the appeal to Appellate Authority on or before 22nd November. 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.

2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.

   GST law also 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 (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Shubhgrah Furnishers is required to file an appeal only with the Central Tax Appellate Authority.

15. On scrutiny of returns filed by Chandan & Co., the Department found some discrepancy in ITC claimed by the company and consequently a Departmental audit was conducted under section 65 of the CGST Act. On conclusion of the audit in February, the Department issued a Show Cause Notice (SCN) alleging that the company had wrongly and deliberately claimed ITC in the returns without actual receipt of goods for the month of January. The Joint Commissioner of Central Tax, not being satisfied by the reply given by the company to the SCN, passed a written order on 28th April which was received by the company on 1st May. The order confirmed the tax demand of ₹ 30,00,000 (i.e., CGST ₹ 15,00,000 and SGST ₹ 15,00,000) and imposed a penalty of equal amount under section 74.

Aggrieved by the order, Chandan & Co. decides to contest the order of adjudication in its entirety. It seeks advice on the following issues –

(i) To whom should it make an appeal? Can it directly approach the High Court?

(ii) What is the time limit for filing the appeal in the given case?

(iii) Is there any requirement of pre-deposit of any amount and if so, what would be the amount?

Provide your legal and reasoned advice to Chandan & Co.

(5 Marks May '22)

Answer:

(i) An appeal against the order passed by Joint Commissioner lies before the Appellate Authority Commissioner (Appeals). Chandan & Co. cannot directly approach the High Court. It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal. However, a writ petition can be filed directly before the High Court for relief.

(ii) The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May. Hence, the appeal must be filed on or before 1st August.

(iii) No appeal can be filed before the Appellate Authority unless appellant – Chandan & Co. has paid pre-deposit of ₹ 3,00,000, computed as sum of the following:

   (a) Full amount of tax, interest and penalty arising from the order as admitted by him, viz. nil, and

(b) 10% of the remaining tax in dispute (₹ 30,00,000) arising from the order, viz. ₹ 3,00,000.

16. Nitya Associates is engaged in supplying taxable services in Kerela. The Assistant Commissioner of Central Tax passed an adjudication order under section 73 which was received by Nitya Associates on 18th October. In the said order, GST liability of ₹ 6,00,000 (CGST + SGST) was decided alongwith interest payable @ 18% p.a. for number of delayed days and a penalty of ₹ 60,000. Nitya Associates was in complete disagreement with said order. So, it filed an appeal before the Appellate Authority on 31st October.

Determine the amount of pre-deposit to be made by Nitya Associates for filing the appeal.

Whether your answer would be different if Nitya Associates appeals only against part of the demanded amount, say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order? (May 23)

Answer:

Section 107(6) provides that no appeal shall be filed before Appellate Authority (AA), 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 ₹ 20 crore, in relation to which the appeal has been filed.

However, no appeal shall be filed to AA against an order under section 129(3) [order for payment of penalty for release of detained/seized goods/conveyances], unless a sum equal to 25% of the penalty has been paid by the appellant.

*Equivalent amount is required to be deposited with respect to SGST liability.

Thus, in the given case, Nitya Associates has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 (i.e. CGST ₹ 30,000 and SGST ₹ 30,000).

However, when Nitya Associates admits the liability of ₹ 2,00,000 (CGST + SGST) and disputes only the balance tax demanded of ₹ 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

Other ICAI Module Questions

17. With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.

Answer:

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.

18. 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.

Answer:

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 amount, subject to a maximum of ₹ 20 crore. (₹ 40 crore in case of IGST) is paid as pre-deposit by the appellant. However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Further, 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).

19. Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.

Answer:

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.

20. With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

Answer:

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 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 person concerned. 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 3 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

21. The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

Answer:

The statement is incorrect. Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where – o the tax or input tax credit involved or o the difference in tax or the difference in input tax credit involved or o the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000

22. Mr. Jumbo 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 came also in favour of the Department. Mr. Jumbo now wants to file an appeal against the decision of the Appellate Tribunal 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.

(MAY 2023) (4 Marks)

Answer:

Since the issue involved in Mr. Jumbo's appeal relates to the place of supply, the appeal in his case would have been decided by the –
(i) National Bench of the Tribunal.
(ii) Regional Bench of the Tribunal.
An appeal against the decision of the National/Regional Bench lies directly to the Supreme Court.
Thus, in the given case Mr. Jumbo will have to file an appeal with the Supreme Court against the decision of the Appellate Tribunal.

23. In an order passed dated 1st April 2023 issued to Sita Ram Pvt. Ltd., the Commissioner of Central Tax, being Revisionary Authority has confirmed IGST demand of Rs. 1400 crore, penalty of Rs. 200 crore and interest of Rs. 20 crore.
Sita Ram Pvt. Ltd. admits the tax liability, penalty and interest to the extent of Rs. 200 crore, Rs. 20 crore and Rs. 10 crore respectively but wishes to litigate the balance amount of demand and thus, Sita Ram Pvt. Ltd. deposits the required amount of pre-deposit on 12th April 2023 and files an appeal with the GSTAT.
GSTAT decides the appeal in favour of Sita Ram Pvt. Ltd. on 12th June 2023. Sita Ram Pvt. Ltd. submits an application seeking refund of the pre-deposit along with applicable interest on 2nd July 2023 and the department acknowledges the application on the same day. The amount of pre-deposit is refunded to Sita Ram Pvt. Ltd. on 15th October 2003.
With reference to provisions of the GST law, compute the amount of predeposit required to be deposited before filing an appeal to GSTAT and interest payable by the Department on refund of such pre-deposit, if any, along with necessary explanations.

(MAY 2024) (5 Marks)

Answer:

The amount of pre-deposit to be made by Sita Ram Pvt. Ltd. for filing the appeal to the GSTAT is as under –
(a) full amount of tax, interest and penalty as admitted by it, i.e., Rs. 230 (200+20+10) crores and
(b) 10% of the remaining tax in dispute, i.e., Rs. 120 crore (10% of Rs. 1,200 crore) subject to a maximum of Rs. 40 crores (in case of IGST).
= Rs. 270 crores
If the pre-deposit made by the appellant before the Tribunal is required to be refunded consequent to any order of the Tribunal, interest @ 9% p.a. shall be payable from the date of payment of the amount till the date of refund of such amount.
Period of delay counted from 12th April 2023 is 186 days

Interest (rounded off) = Rs. 40 crore × 9% × 186/366 = Rs. 1,82,95,082

24. Under what circumstances, the Revisional Authority (RA) cannot exercise the powers of revision under section 108 of the CGST Act, 2017.
Is there any exception to the above provision?

(6 Marks) (MAY 2024)

Answer:

The RA shall not exercise the power of revision if:

(a) the order sought to be revised has been subject to an appeal before Appellate Authority (AA) or Tribunal or High Court or Supreme Court; or

(b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or

(c) the order has already been taken for revision at an earlier stage; or (d) the order sought to be revised is itself a revisional order.

(d) the order sought to be received is itself a revisional order.

(e) Non appealable orders and decisions i.e., order covered under section 121.

The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

25. Miss Meena is aggrieved by the order passed by the Assistant Commissioner and wants to file an appeal with Commissioner (Appeals). Her accountant, who looked after her GST related matters including filing of GST returns /other compliances online, is on leave for one month. So, she decides to file the appeal manually.
The order against which appeal is to be filed is available on the GST portal. There was no such notification issued by the commissioner that appeal can be filed manually.
With reference to the provisions of GST law, you are required to ascertain: -
(i) Whether Miss Meena can file an appeal to the commissioner (Appeals) in this case?
(ii) Whether decision taken by Miss Meena to manually file an appeal is valid?
Also explain the relevant legal provisions in support of your answer.

(NOV 2024) (5 Marks)

Answer:

(i) An appeal may be filed to the Commissioner (Appeals) against an adjudicating order if such an order is passed by the Additional or Joint Commissioner.

However, where the order is passed by the Assistant Commissioner, the appeal is to be filed to any officer not below the rank of Joint Commissioner (Appeals).

Thus, in the given case, appeal cannot be filed to the Commissioner (Appeals), but to any officer not below the rank of Joint Commissioner (Appeals).

(ii) An appeal to the Appellate Authority may be filed manually only if-

(a) the Commissioner has so notified, or

(b) the decision or order to be appealed against is not available on the common portal.

Therefore, in light of the facts of the given case, the appeal cannot be filed manually.

26. In an appeal filed with the High Court by Prateek Ltd., on the question whether activity undertaken by Prateek Ltd. amounts to supply, the appeal was decided in favour of Prateek Ltd. The amount of tax, interest and penalty involved were IGST of Rs. 1.2 crore, interest of Rs. 60 lakh and penalty of Rs. 50 lakh.

However, the Department does not agree with the order passed by the High Court and contends that the said activity amounts to supply under GST. The Department wants to file an appeal before the Supreme Court relating to the dispute pertaining to demand of tax, interest and penalty.

You are required to examine whether appeal can be filed by the Department in the given case. Will your answer change, in case matter is related to valuation of services instead of determining whether the said activity amounts to supply?

(RTP MAY 2025)

Answer:

Section 120 of the CGST Act, 2017 provides that the Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter. CBIC vide *Circular No. 207/1/2024 GST dated 26.06. 2024* has fixed the following monetary limits for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:

Appellate forum	Monetary limit (Amount involved in Rs.)
GSTAT	20 lakhs
High Court	1 crore
Supreme Court	2 crores

Further, where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal, viz. Rs. 1.2 crore (amount of tax only) in the given case. Thus, appeal cannot be filed by the Department to Supreme Court in the given case as the amount involved as per the circular does not exceed the monetary limit of Rs. 2 crore.

However, the circular further provides that the monetary limits specified above for filing appeal or application by the Department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

(i) Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or

(ii) Where any rules or regulations made under the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or

(iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the rules made thereunder; or

(iv) Where the matter is related to –

(a) valuation of goods or services; or

(b) classification of goods or services; or

(c) refunds; or

(d) place of supply; or

(e) any other issue,

which is recurring in nature and/or involves interpretation of the provisions of the GST law/ the Rules/ notification/ circular/ order/ instruction etc.; or

(v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or

(vi) Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

In view of the above, if in the given case the matter is related to valuation of services, appeal can be filed by the Department to the Supreme Court based on the merits irrespective of the monetary limits.

27. Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017.

(5 Marks) (MTP May 2023)

Answer

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).

28. Krish Pvt. Ltd. received an adjudication order demanding CGST and SGST of Rs. 200 crore each. Krish Pvt. Ltd. filed an appeal to Appellate Authority contesting the entire demand after depositing the mandatory pre-deposit amount. The Appellate Authority heard the appeal and decided in favour of the Department confirming the entire demand. The company filed an appeal to the Appellate Tribunal after depositing the mandatory pre-deposit amount. Determine the mandatory pre-deposit amount required to be deposited under GST law with Appellate Authority and Appellate Tribunal by Krish Pvt. Ltd. while filing appeal. (5 Marks)

(MTP Nov 2023)

Answer

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 Rs. 20 crore.

Further, 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, and

(b) 10% 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. 20 crore, in relation to which appeal has been filed.

In view of the above provisions, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal to the Appellate Authority is Rs. 20 crore [10% of Rs. 200 crore (tax in dispute)]. Equivalent amount has to be paid for SGST too. Thus, a total of Rs. 40 crore has to be paid by the company as pre-deposit for filing the appeal to the Appellate Authority.

Further, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal before the Tribunal is Rs. 20 crore [10% of Rs. 200 crore (tax in dispute)]. Equivalent amount has to be paid for SGST too. Thus, a total of Rs. 40 crore has to be paid by the

company as pre-deposit for filing the appeal to the Appellate Tribunal.

It may be noted that the Appellate Tribunal has not been constituted so far and thus, no appeals can be filed before it.

29. Mr. Pappu is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority.

While commenting on the decision of Mr. Pappu, you are also required to state the powers of the Revisional Authority to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017.

What is the time period for the Revisional Authority to exercise the power of revision? (5 Marks) (MTP Nov 2024)

Answer

The decision of Mr. Pappu of making an appeal to the First Appellate Authority against the order of the RA is not valid in law. Any person aggrieved by an order passed against him by RA under CGST Act, 2017 may appeal to the Appellate Tribunal, the second level of appeal

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

(i) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.

(ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.

(iii) The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order.

The RA can revise an order after the expiry of a period of 6 months from the date of communication of the said order but not later than expiry of a period of 3 years from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

23 ADVANCE RULING

Theory

1. Which are the questions for which advance ruling can be sought?

Answer:

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 provisions of the GST Act(s);

(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 under the Act;

(f) whether applicant is required to be registered under the Act;

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

2. What is the objective of having a mechanism of Advance Ruling?

Answer:

The broad objective for setting up such an authority is to:

(i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;

(ii) helps taxpayer in financial planning and making new investments

(iii) attract Foreign Direct Investment (FDI);

(iv) reduce litigation;

(v) pronounce ruling expeditiously in transparent and inexpensive manner

3. To whom will the Advance Ruling be applicable?

Answer:

The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in section 97(2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

4. What is the time period for applicability of Advance Ruling?

Answer:

The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or

circumstances.

5. Can an advance ruling given be nullified?

Answer:

Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) 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.

6. 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.

Answer:

1) 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.
2) 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.
3) 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.

7. Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.

Answer:

As per section 97(2), 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

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.

8. Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98. (PAST EXAM NOV 2018)

Answer:

The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 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.

9. Advance Ruling once issued cannot be held to be void ab-initio under any circumstances. Discuss the correctness of the statement by explaining relevant provisions. (Nov 23)

The said statement is incorrect. Section 104 of the CGST Act, 2017 states the circumstances under which the advance 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 is sued).

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.

Answer:

(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)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 103(2) 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.

(iii) No, the tax advisor's view is not correct. As per section 100, 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.

(iv) Section 103 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.

Practical Theory

10. 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) 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?

(iii) 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?

(iv) 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? (MTP MAY 2019)

Answer:

(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)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 103(2) 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.

(iii) No, the tax advisor's view is not correct. As per section 100, 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.

(iv) Section 103 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.

11. Karan is engaged in supplying certain goods in the State of Punjab from his factory located in Jalandhar, Punjab. He is not yet registered under GST. As his turnover is moving towards the applicable threshold limit for registration under GST, he approaches his tax advisor to ascertain the applicability of GST on the supply made by him.

His tax advisor is unable to determine whether supply of goods by Karan amounts to supply of goods under GST law and also, the classification of said goods. He advises Karan to apply for the advance ruling in respect of said issues. He told Karan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Karan agrees with his view, but has some apprehensions.

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

(i) Can Karan seek advance ruling to determine as to whether supply of goods by Karan amounts to supply of goods under GST law and if yes, to determine the classification of said goods?

(ii) Karan is apprehensive that Authority for Advance Ruling may take years to pronounce its ruling. Whether his apprehension is correct? (5 Marks Sep 22)

Answer:

(i) 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 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 as well as the classification of any goods or services or both. Therefore, Karan can seek the advance ruling for determining whether supply of goods by him amounts to supply of goods under GST law as well as for determining the classification of said goods.

(ii) No, Karan's view is not correct. As per section 98(6) of CGST Act, 2017, the Authority for Advance Ruling shall pronounce its ruling in writing within 90 days from the date of receipt of application.

12. Can Mr. Venkat obtain advance ruling for the issue related to place of supply? Also list all issues for which advance ruling can be sought. (4 Marks Nov 22)

Answer:

No, Venkat cannot obtain advance ruling for issue related to place of supply

The above answer is based on the view taken by the CBIC in its e-flyer issued on 'advance ruling'. However, it is also possible to take a view 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 factors to determine as to whether the supply is leviable to CGST & SGST or IGST. In that case, conclusion will be that Venkat can obtain advance ruling for issue related to place of supply.

13. Mr. Raj intends to start a new manufacturing business in Jaipur. However, he is not able to determine the classification of the goods proposed to be manufactured and supplied by him since the classification of said goods has been contentious. Mr. Raj read an article about advance ruling in the newspaper and decided to apply for advance ruling so as to avoid litigation later.

Mr. Rahul, who is friend of Mr. Raj is also engaged in the supply of goods similar to which Mr. Raj proposes to manufacture in Jaipur and Mr. Rahul advised him to apply the same classification as of his, since he has already taken advance ruling order regarding classification of the said goods.

Mr. Raj's tax consultant also agreed with the advice given by Mr. Rahul. Mr. Raj also thought it to be a good decision since he was unregistered and thought that he needed to be registered to apply for advance ruling in his name.

You are required to advise Mr. Raj with respect to following:

(a) Whether Mr. Raj and his tax consultant are right and can classify the goods proposed to be supplied by Mr. Raj on the basis of his friend Mr. Rahul's advance ruling order?

(b) Whether Raj needs to get registered to apply for advance ruling?

(4 Marks) (MAY 2023)

Answer:

(a) No, Mr. Raj and his tax consultant are not correct.

An advance ruling is binding only on the applicant who had sought it and on the concerned officer. An advance ruling is not applicable to similarly placed other taxable persons in the State.

Thus, Mr. Raj cannot classify the goods to be supplied by him on the basis of his friend Mr. Rahul's advance ruling order.

(b) No, Mr. Raj need not register to apply for advance ruling since advance ruling can be sought by a registered person or person desirous of obtaining registration. It is not mandatory for a person seeking advance ruling to be registered.

14. Advance Ruling once issued cannot be held to be void ab-initio under any circumstances. Discuss the correctness of the statement by explaining relevant provisions.

(RTP NOV 2023)

Answer:

The said statement is incorrect. Section 104 of the CGST Act, 2017 states the circumstances under which the advance 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.

15. 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.

(6 Marks) (MTP May 2024)

Answer

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.

16. 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 the CGST Act, 2017.

(6 Marks) (MTP Nov 2024)

Answer

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.

24 MISCELLANEOUS PROVISIONS

Theory

1. Briefly explain how the GST compliance rating score is determined.

Answer:

As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

2. When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions

Answer:

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)].

3. Write a short note on Anti-profiteering measure.

Answer:

As per section 171, 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. Competition Commission of India (CCI) 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. Henceforth, all investigations, based on complaints filed by consumers, will be done by the Directorate General of Antiprofiteering (DGAP) which will then submit a report to CCI.

4. State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.

Answer:

Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

(a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or

(b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or

(c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or

(d) By making the same available at common portal; or

(e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or

(f) If none of the above modes is practicable then by Affixing at last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority concerned.

5. Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.
Is there any exception to this rule? Discuss in brief.

Answer:

Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:

(i) For prosecution
(ii) For carrying out the objects of the CGST Act
(iii) For service of notice or recovery of demand
(iv) For furnishing information to Court in a proceeding where Government is a party
(v) For audit of tax receipts or refunds
(vi) For inquiry into the conduct of a GST officer
(vii) For enabling levy, realisation of any tax or duty
(viii) In lawful exercise of powers
(ix) For enquiry into a charge of misconduct by any professional
(x) For data entry on automated system
(xi) For fulfilling the requirement under any other law and in public interest.

6. Explain the scope of circulars and instructions issued by the Board.

Answer:

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

7. 'The time limits provided under the CGST Act cannot be extended.'Do you agree with the statement? Give your views with reference to section 168A.

Answer:

The statement is not correct. The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

8. Explain the provisions relating to rectification of errors apparent on the face of record under section 161. (MTP JULY 2021) (MTP MAY 2019)

Answer:

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 made 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.

9. Elaborate the duties of Anti-profiteering Authority. (PAST EXAM NOV 2018)

Answer:

The duties of the Anti-profiteering Authority are:

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

  (a) reduction in prices

  (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be.

  If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;

  (c) imposition of penalty

  (d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

10. Briefly answer the following questions with reference to the provisions of rectification of mistakes/errors apparent on the face of record by any authority, under section 161 of the CGST Act?

(i) Which documents are covered under section 161?

(ii) Who can rectify the errors apparent on the face of record?

(MTP March'23)

Answer:

(i) Following documents are covered under section 161 of the CGST Act, 2017:

  (a) Decision

  (b) Order

  (c) Any notice

  (d) Certificate

  (e) Any other document

(ii) 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 documents.

11. Explain the scope of circulars and instructions issued by the Board. (4 Marks April 22)

Answer:

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

12. Director General of Anti-Profiteering Authority (Competition Commission of India), determines that a registered person, has not passed on the benefits of reduction of GST tax rates. List the different possible orders that may be passed by the said authority for the above finding. (5 Marks Dec '21)

Answer:

Where the Authority (Competition Commission of India) determines that a registered person has not passed on the benefit, it may 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 @ 18% or recovery of the amount including interest not returned, as the case may be

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State, where the eligible person does not claim return of the amount or is not identifiable

(d) imposition of prescribed penalty; and

(e) cancellation of registration under GST.

Note - Students are advised to read 'Director General of Anti-Profiteering Authority' as 'Anti- Profiteering Authority'. (Competition Commission of India)

13. Briefly answer the following questions with reference to the provisions of rectification of mistakes/errors apparent on the face of record by any authority, under section 161 of the CGST Act?

(i) Which documents are covered under section 161?

(ii) Who can rectify the errors apparent on the face of record?

(4 Marks) (MTP May 2023)

Answer

(i) Following documents are covered under section 161 of the CGST Act, 2017:

- Decision
- Order
- Any notice
- Certificate
- Any other document

(ii) 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 documents.

14. Briefly answer the following questions with reference to the provisions of rectification of mistakes/errors apparent on the face of record by any authority, under section 161 of the CGST Act,2017?

(i) Who can rectify the errors apparent on the face of record?

(ii) What type of mistakes or errors can be rectified? (4 Marks) (MTP May 2024)

Answer

(i) 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 documents.

(ii) Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.

15. Elaborate the functions of Anti-profiteering Authority under GST laws?

Discuss the relevant provisions. (4 Marks) (MTP May 2024)

Answer

The authority shall discharge the following functions, namely:-

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

(a) reduction in prices

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be.

If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;

(c) imposition of penalty

(d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th of

(v) the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

16. Section 158(1) of the CGST Act, 2017 lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act, 2017 is confidential and cannot be disclosed.

Is there any exception to this rule? Discuss in brief. (4 Marks) (MTP Nov 2024)

Answer

Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3) of the CGST Act, 2017. Such specific purposes are given in brief hereunder:

(i) For prosecution

(ii) For carrying out the objects of the CGST Act

(iii) For service of notice or recovery of demand
(iv) For furnishing information to Court in a proceeding where Government is a party
(v) For audit of tax receipts or refunds
(vi) For inquiry into the conduct of a GST officer
(vii) For enabling levy, realisation of any tax or duty
(viii) In lawful exercise of powers
(ix) For enquiry into a charge of misconduct by any professional
(x) For data entry on automated system
(xi) For fulfilling the requirement under any other law and in public interest.

17. Explain the provisions relating to rectification of errors apparent on the face of record under section 161.

(4 Marks) (MTP May 2025)

Answer

Section 161 of the CGST Act, 2017 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 made 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.

18. Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017.

(4 Marks) (MTP May 2025)

Answer

Section 161 of the CGST Act, 2017 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 made 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.