

PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

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

Question 1

- (a) M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-2018 under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 2018 by M/s Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

Sl. No.	Particulars	Amount in ₹
(i)	The Basic price of the machine (exclusive of taxes and discount).	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
(iv)	Design and engineering charges of the machine	90,000
(v)	Tax levied by Municipal Authority on the sale of the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine.	12,000
Inward Supplies		
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

The Suggested Answers for Paper 8: Indirect Tax Laws are based on the position of GST law as amended by the significant notifications/circulars issued till 30th April, 2018 and customs law as amended by the Finance Act, 2017 and notifications/circulars issued up to 30.04.2018 which were relevant for November, 2018 examinations.

Note:

- (i) M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 2018. All the other conditions necessary for availing the eligible input tax credit have been fulfilled.
- (ii) There are no other transactions of supplies during the month of February, 2018.
- (iii) M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons. **(10 Marks)**
- (b) Chiku Traders is a registered supplier of plastic goods. On 10th April, 2018, Chiku Traders received an order from Neelu Traders for supply of a consignment of plastic goods. Chiku Traders gets the consignment ready by 15th April, 2018. The invoice for the consignment was issued the next day, 15th April, 2018. Neelu Traders collects the consignment from the godown of Chiku Traders on 25th April, 2018 and hands over the cheque towards payment on the same date. The said payment is entered in the books of accounts of Chiku Traders on 26th April, 2018 and amount is credited in their bank account on 27th April, 2018.
- Determine the time of supply of the plastic goods supplied by Chiku Traders to Neelu Traders as per the provisions of CGST Act, 2017. **(5 Marks)**
- (c) Jolly overseas Ltd. of Hyderabad has imported a machine from U.K (England) through the sea route by a vessel. The details of the import transaction are as follows:

Sl. No.	Particulars	Amount in U.K. (£)
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	600
(iii)	Handling charges paid for loading the machine on the ship at the port of exportation	500
(iv)	License fee relating to the imported goods payable by the importer as a condition of sale	900
(v)	Actual Freight charges from the port of export to the port of import are not ascertainable	-
(vi)	Actual insurance charges paid	200
(vii)	Landing charges paid at the place of importation are not ascertainable	-
(i)	Handling charges associated with the delivery of the imported goods at the place of importation	₹ 15,000

1	Bill of entry:	Dated 21.01.2018 <u>Exchange rate on that day:-</u> (a) Notified by CBEC 1 UK £ = ₹101 (b) prescribed by RBI 1 UK £ = ₹100
2	Entry inward:	Dated 26.01.2018 <u>Exchange rate on that day:-</u> (a) Notified by CBEC 1 UK £ = ₹102 (b) prescribed by RBI 1 UK £ = ₹103

Compute the assessable value of the machine (in rupees) for the purpose of levy of Customs Duty. **(5 Marks)**

Answer**(a) Computation of value of machine sold by M/s. Jonty India Ltd.**

Particulars	₹
Basic price of machine	28,50,000
Add: Secondary packing [Note 1(i)]	30,000
Design and engineering charges [Note 1(ii)]	90,000
Tax levied by Municipal Authority [Note 1(iii)]	25,000
Pre-delivery inspection charges paid by M/s. Dhanuka Ltd. [Note 1(iv)]	22,000
Interest for delay in payment [₹ 12,000 x 100/118] [Note 1(v)] – (rounded off)	10,169
Less: 3% Trade discount on basic price of machinery = ₹ 28,50,000 × 3% [Note 2]	<u>(85,500)</u>
Taxable value of supply	29,41,669

Computation of net GST payable (in cash) by M/s. Jonty India Ltd. for the month of February, 2018

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
Tax on value of ₹ 29,41,669 (rounded off)	2,64,750	2,64,750
Less: Input tax credit [ITC] of tax paid on electrical transformer used in the manufacturing process [Note 3]	<u>15,000</u>	<u>15,000</u>
Net GST payable	2,49,750	2,49,750

Notes:

- (1) As per section 15(2) of the CGST Act, 2017-
- (i) All incidental expenses, including packing, charged by the supplier to the recipient of a supply are includible in the value of supply.
 - (ii) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
 - (iii) Any taxes levied under any law for the time being in force other than CGST/SGST/UTGST/IGST, if charged separately by the supplier are includible in the value of supply.
 - (iv) 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 and/or services is includible in the value of supply.
 - (v) Interest for the delayed payment of any consideration for any supply is includible in the value of supply. Further, it is assumed that such interest is inclusive of tax and that the same has been received by M/s. Jonty India Ltd. in the month of February itself. Therefore, the time of supply of such interest will be in February, 2018 and the same will be considered while paying the tax liability of that month.
 - (vi) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply. Since in the given case, subsidy is received from State Government, the same has not been included in the value of supply presuming it to be directly linked to the price.*
- (2) Trade discount has been shown in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3) of the CGST Act, 2017.
- (3) ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply¹ [Section 17(5)]. Further, since transformers are used in the course or furtherance of business, ITC thereon is available in terms of section 16(1).

Note**In the above answer, it has been assumed that the basic price of the machine has been arrived at after adjusting the subsidy and that the basic price is the price charged from the customer.*

¹*It has been assumed that the food items are provided free of cost to the employees in the course of employment.*

Consequently, subsidy received from State Government has not been reduced from the basic price of the machine while arriving at the taxable value of supply.

However, it is also possible to assume that the subsidy has yet not been adjusted in the basic price and that the price which will be charged from the customer is ₹27,70,000 (₹28,50,000 – ₹80,000) i.e., after excluding subsidy. In that case, the value of supply will be ₹28,61,669.

- (b) A registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) of the CGST Act, 2017, i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31(1).

As per section 31, the invoice in case of supply of goods needs to be issued either before or at the time of removal/delivery of goods.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, time of supply is the date of issue of invoice, which is 16th April, 2018*.

* Note: In the question, the date of issue of invoice to be read as 16th April, 2018. It can also be answered by taking date of invoice as given in question, i.e. 15th April, 2018. In that case, the time of supply will be 15th April, 2018.

(c) **Computation of assessable value of machine**

Particulars	Amount (UK £)
Cost of the machine at the factory of the exporter	20,000
Add: Licence fee relating to the imported goods payable by the importer as a condition of sale [Note 1(i)]	900
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of £22,000] [Note 1(ii)]	4,400
Insurance charges [Taken at actuals]	<u>200</u>
CIF value	25,500
Add: Landing charges paid at the place of importation and handling charges associated with the delivery of the imported goods at the place of importation [Note 1(iii)]	Nil
Assessable value	25,500
Assessable value in Indian rupees @ ₹101/ per £ [Note 2]	25,75,500

Notes:

- (1) As per rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007-

- (i) Licence fees related to the imported goods payable as a condition of the sale of the goods being valued is includible in the assessable value
- (ii) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value.

Where such cost is not ascertainable, it shall be 20% of the free on board (FOB) value of the goods.

FOB value will be sum total of cost of machine, transport charges from factory to port of exportation, handling charges at the port of exportation and licence fee paid as a condition of sale of imported goods, which will be £ 22,000 [£ 20,000 + £ 600 + £ 500+ £ 900]

- (iii) Only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value. The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.
- (2) As per section 14 of the Customs Act, 1962, the rate of exchange notified by the CBEC on the date of presentation of bill of entry is to be considered for the purpose of conversion of assessable value into Indian currency.

Question 2

- (a) PQR Company Ltd., a registered supplier of Bengaluru (Karnataka), is a manufacturer of goods. The company provides the following information pertaining to GST paid on input supplies during the month of April, 2018:

Sl. No.	Items	GST paid in (₹)
(i)	Life Insurance premium paid by the company on the life of factory employees as per the policy of the company	1,50,000
(ii)	Raw materials purchased for which invoice is missing but delivery challan is available.	38,000
(iii)	Raw materials purchased which are used for zero rated outward supply.	50,000
(iv)	Works contractor's service used for repair of factory building which is debited in the profit and loss account of company.	30,000
(v)	Company purchased the capital goods for ₹ 4,00,000 and claimed depreciation of ₹ 44,800 (@ 10%) on the full amount of ₹ 4,48,000 under Income Tax Act, 1961.	48,000

Other Information:-

- (i) In the month of September, 2017, PQR Company Ltd. availed input tax credit of ₹ 2,40,000 on purchase of raw material which was directly sent to job worker's

premises under a challan on 25-09-2017. The said raw material has not been received back from the Job worker up to 30-04-2018.

- (ii) All the above input supplies except (i) above have been used in the manufacture of taxable goods.

Compute the amount of net Input Tax Credit available for the month of April, 2018 with necessary explanations for your conclusion for each item. You may assume that all the other conditions necessary for availing the eligible input tax credits have been fulfilled.

(7 Marks)

- (b) Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat), provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra). The provision of service was completed on 10-08-2018 and payment received was entered in the books of Mr. Mahendra Sharma on 11-08-2018.

With effect from 16/08/2018, applicable GST rate was increased from 5% to 12%. However payment for the service received was credited in his bank account on 17/08/2018 and invoice for the same was raised on 23-08-2018.

Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.

Examine the correctness of Mr. Mahendra Sharma's contention and determine the time of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was credited to the bank account on 14-08-2018 instead of 17-08-2018?

Note: You may assume that all days are working days.

(5 Marks)

- (c) M/s Heeralal and Sons registered in Karnataka has opted to avail the benefit of composition scheme. It has furnished the following details for the tax period ended on 30-06-2018.

S. No.	Items	₹
(i)	Taxable turnover of goods within the state	15,00,000
(ii)	Exempted turnover of goods within the state	17,00,000
	Total Turnover	32,00,000

Using the above information, calculate total GST (No need for bifurcation between CGST and SGST) to be paid by the firm for the tax period ended on 30-06-2018 in following independent situations:

(i)	M/s Heeralal and Sons is a Manufacturer
(ii)	M/s Heeralal and Sons is a Trader

(3 Marks)

Answer either (d) or (e) only. Both need not be answered.

- (d) Who can suspend/cancel the warehouse licence and on what grounds? What is the effect of suspension or cancellation on the warehouse and the goods in the warehouse? Explain in brief with reference to provisions relating to cancellation of licence of Warehouse under section 58B of the Customs Act, 1962. **(5 Marks)**

OR

- (e) With regard to the powers of the Customs officers to draw samples under section 144 of the Customs Act, 1962, indicate
- I. The purposes for which samples can be drawn;
 - II. When can the samples be drawn;
 - III. The provisions for disposal of the samples after the purpose is over. **(5 Marks)**

Answer

- (a) **Computation of Input Tax Credit (ITC) available with PQR Ltd. for the month of April, 2018**

Particulars	₹
Life Insurance premium paid by the company on the life of factory employees [Note 1]	Nil
Raw materials purchased [Note 2]	Nil
Raw materials used for zero rated outward supply [Note 3]	50,000
Work contractor's service [Note 4]	30,000
Capital goods purchased wherein the depreciation is claimed on the tax component [Note 5]	Nil
Total ITC available	80,000

Notes:

- (1) ITC on life insurance service is available only when the same is notified by the Government as being obligatory for an employer to provide to its employees under any law for the time being in force. In the absence of any information, it is assumed that such services have not been notified in the instant case and thus, the ITC thereon is blocked [Section 17(5) of the CGST Act, 2017].
- (2) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16 of the CGST Act, 2017]
- (3) ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply – [Section 16 of the IGST Act, 2017]
- (4) ITC is blocked on works contract services when supplied for construction of an immovable property. However, "construction" includes only that repairs which are

capitalized along with the said immovable property. In this case, since repairs of building is debited to P & L Account, the same does not amount to 'construction' and hence ITC thereon is available - [Section 17(5) of the CGST Act, 2017].

- (5) ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act - [Section 16(3) of the CGST Act, 2017]
- (6) The principal is entitled to take ITC of inputs sent for job work even if the said inputs are directly sent to job worker. However, where said inputs are not received back by the principal within a period of 1 year of the date of receipt of inputs by the job worker, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were received by the job worker – [Section 19 of the CGST Act, 2017].

Hence, the ITC taken by PQR Company Ltd. in September, 2017 is valid and since 1 year period has yet not lapsed in April, 2018, there will be no tax liability on such inputs.

- (b) As per section 14 of the CGST Act, 2017, in case of change in rate of tax, date of receipt of payment is earlier of:

- (i) date of entering payment in the books of account of the supplier (11.08.2018)

or

- (ii) date on which the payment is credited to his bank account (17.08.2018).

However, if the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account.

In the given case, since the payment has been credited in the bank within 4 working days from the date of change in the rate of tax, the date of receipt of payment will be 11.08.2018 [i.e., earlier of 11.08.2018 or 17.08.2018].

Section 14 further provides that where goods and/or services have been supplied before the change in rate of tax (10.08.2018) and the payment has been received before the change in rate of tax (11.08.2018), but the invoice for the same is issued after the change in rate of tax (23.08.2018), the time of supply shall be the date of receipt of payment.

Therefore, in the given case, the time of supply will be 11.08.2018 and the applicable rate of tax will be rate prevalent at the time of supply, i.e. IGST @ 5%.

Therefore, the contention of Mahendra Sharma is correct.

Further, if the date on which the payment is credited to bank account of supplier is 14.08.2018, the date of receipt of payment will continue to be 11.08.2018 [i.e., earlier of 11.08.2018 or 14.08.2018] since the payment is credited in the bank account before

change in rate of tax. Consequently, with other things remaining the same, the time of supply and the applicable rate of tax will remain the same.

(c) Computation of amount payable under composition scheme

(i) If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% (CGST + SGST) of the turnover in the State as under:

1% of ₹ 32,00,000 [₹ 15,00,000 + 17,00,000]

= ₹ 32,000

(ii) If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% (CGST + SGST) of the turnover of taxable supplies of goods in the State as under:

1% of ₹ 15,00,000

= ₹ 15,000

(d) Section 58B of the Customs Act, 1962 provides that Principal Commissioner of Customs or Commissioner of Customs may cancel the warehousing licence, after giving the licensee a reasonable opportunity of being heard, if the licensee contravenes any of the provisions of the Customs law or breaches any of the conditions of the licence.

Further, the Principal Commissioner/ Commissioner of Customs may suspend operation of the warehouse during the pendency of an enquiry for cancellation of the licence.

During the period of suspension, no goods shall be deposited in such warehouse. However, the warehousing provisions shall continue to apply to the goods already deposited in the warehouse.

Where the licence is cancelled, the goods warehoused shall, within 7 days of the date of service the order of such cancellation on the licensee or within such extended period as may be allowed, be removed from such warehouse to another warehouse or be cleared for home consumption or export.

However, the warehousing provisions shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

- (e)**
- (I) The samples can be drawn for examination or testing, or for ascertaining the value thereof, or for any other purposes of Customs Act.
 - (II) The samples can be taken on the entry or clearance of any goods or at any time while such goods are being passed through the customs area.
 - (III) After the purpose for which a sample was taken is over, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be

disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct.

Question 3

(a) *Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for the month of April, 2018:*

S. No.	Particulars	₹
(A)	Receipts	
	Details of Sales	
	(i) Sales in Rajasthan	8,75,000
	(ii) Sales in States other than Rajasthan	3,75,000
	(iii) Export under bond	6,25,000
(B)	Payments	
(1)	Raw materials	
	(i) Purchased from registered suppliers located in Rajasthan	1,06,250
	(ii) Purchased from unregistered suppliers located in Rajasthan	37,500
	(iii) Purchased from Punjab from registered supplier	1,00,000
	(iv) Integrated tax paid on Import from USA	22,732
(2)	Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and Vat paid) worth ₹ 31,250 for running the machinery in the factory	1,56,250
(3)	Monthly rent for the factory building to the owner in Rajasthan	1,00,000
(4)	Salary paid to employees on rolls	6,25,000
(5)	Premium paid on life insurance policies taken for specified employees. Life insurance policies for specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard. The Government has notified such life insurance service under section 17(5)(b)(iii)(A). The life insurance service provider is registered in Rajasthan.	2,00,000
All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.		
The balance of Input Tax Credit (ITC) with Pari Ltd. as on 1 st April, 2018 is		
	CGST	₹ 20,000
	SGST	₹ 15,000
	IGST	₹ 15,000

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the eligible input tax credit have been complied with by Pari Ltd., wherever applicable.

Compute eligible input tax credit and net GST payable (CGST and SGST or IGST as the case may be) by Pari Ltd. for the month of April, 2018. **(10 Marks)**

- (b) On 25th August, 2017, M/s Agarwal & Agarwal Ltd., a registered supplier of textile products located in Bengaluru (Karnataka) purchased one machine for ₹ 12,39,000 including IGST, from one supplier of Maharashtra who issued invoice on the same date. M/s Agarwal & Agarwal Ltd. put the machinery to use on the same day and availed input tax credit for the eligible amount.

M/s Agarwal & Agarwal Ltd. sold this machine after using the machine in the process of manufacture of taxable goods for ₹ 7,50,000 excluding IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20th August 2018.

During purchase as well as sale of the machinery, the IGST rate applicable was 18%.

Is M/s Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine. Also briefly state the relevant statutory provisions.

Note: Assume that there was no change in legal position after August, 2017. **(5 Marks)**

- (c) The Settlement Commission settled a case relating to recovery of drawback. The Customs department contends that the recovery of duty drawback does not involve levy, assessment and collection of customs duty as envisaged under section 127A (b) of the Customs Act, 1962. Therefore Settlement Commission does not have jurisdiction to settle the case.

Discuss with the help of the decided case law, if any, whether the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue? **(5 Marks)**

Answer

- (a) **Computation of eligible input tax credit available with Pari Ltd. in the month of April, 2018**

S. No.	Particulars	Eligible input tax credit		
		CGST ₹	SGST ₹	IGST ₹
1.	Raw Material:			
	Purchased from local registered suppliers [Note 1(i)] (₹ 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	

	Purchased from Punjab from registered supplier [Note 1(i)] (₹ 1,00,000 x 18%)			18,000
	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] [(1,56,250-31,250) x 9%]	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (₹ 2,00,000x 9%)	18,000	18,000	-
	Total	47,812.50	47,812.50	40,732
	Add: Opening balance of ITC on 01.04.2018	<u>20,000</u>	<u>15,000</u>	<u>15,000</u>
	Eligible ITC [Note 7]	67,812.50	62,812.50	55,732

Computation of net GST payable for the month of April, 2018

Particulars	CGST ₹	SGST ₹	IGST ₹
Intra-State sales	78,750	78,750	
Inter-State sales			67,500
Exports under bond [Note 6]	<u>Nil</u>	<u>Nil</u>	<u>Nil</u>
Total output tax liability	78,750	78,750	67,500
Less: Eligible ITC	67,812.50	62,812.50	55,732
Net GST payable	10,937.50	15,937.50	11,768

Notes:

1. (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.
- (ii) All intra-State procurements made by a registered person from an unregistered supplier have been exempted from GST. Therefore, since no GST is paid on such raw material purchased, there does not arise any question of input tax credit (ITC) on such raw material.

- (iii) IGST paid on imported goods qualifies as input tax in terms of section 2(62) of CGST Act, 2017. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act.
2. ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.
 3. ITC on monthly rent is available as the said service is used in the course or furtherance of business.
 4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
 5. ITC on life insurance service is available if the same is notified by the Government under section 17(5)(b)(iii)(A) of the CGST Act as being obligatory for an employer to provide to its employees under any law for the time being in force.
 6. Export of goods is a zero rated supply in terms of section 16 of the IGST Act. A zero rated supply under bond is made without payment of IGST.
 7. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available.
- (b) As per section 18 of the CGST Act, 2017, if capital goods/ plant and machinery on which input tax credit (ITC) has been taken are supplied outward by a registered person, he must pay an amount that is higher of the following:
- (a) ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods or
 - (b) tax on transaction value.

Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal Ltd. shall be computed as follows:

Particulars	₹
ITC taken on the machinery (₹ 12,39,000 × 18/118)	1,89,000
Less: Input tax credit to be reversed @ 5% per quarter for the period of use of machine	
(i) For the year 2017-18 = (₹ 1,89,000 × 5%) × 3 quarters	28,350
(ii) For the year 2018-19 = (₹ 1,89,000 × 5%) × 2 quarters	<u>18,900</u>
Amount required to be paid (A) **	1,41,750
Duty leviable on transaction value (₹ 7,50,000 × 18%) (B)	1,35,000

Amount payable towards disposal of machine is higher of (A) and (B)	1,41,750
Thus, M/s Agarwal & Agarwal Ltd. is required to pay GST amounting to ₹ 1,41,750 at the time of sale of machinery.	

*** In the above solution, amount payable towards disposal of machine has been computed on the basis of provisions of section 18(6) of the CGST Act, 2017 read with rule 40(2) of the CGST Rules, 2017 [wherein ITC to be reversed for the period of use of capital goods/machine has been computed @ 5% for every quarter or part thereof from the date of the issue of invoice].*

However, the said amount can also be computed in accordance with the provisions of section 18(6) of the CGST Act, 2017 read with rule 44(6) of the CGST Rules, 2017 [wherein ITC involved in the remaining useful life (in months) of the capital goods/machine will be reversed on pro-rata basis, taking the useful life as 5 years].

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

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

In view of the above mentioned ruling, it can be inferred that the Settlement Commission has jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue.

Question 4

- (a) *Happy Ltd. located at Alwar (Rajasthan), exclusively manufactures and sells the product "Shine & Shine", which is exempt from GST. Happy Ltd. sells "Shine & Shine" only within Rajasthan. The turnover of Happy Ltd. in the previous year was ₹ 60 lakhs. Happy Ltd. purchased additional machinery (Capital Goods) for manufacturing "Shine & Shine" on 1st April, 2018. The invoice for supply of machinery also was issued on 1st April, 2018. The purchase price of the machinery was ₹ 25 lakh exclusive of CGST and SGST @ 12% (6% + 6%). On 1st December, 2018 exemption available on the product "Shine & Shine" was withdrawn by the Central Government and CGST and SGST @ 18% (9% + 9%) was imposed thereon. The turnover of Happy Ltd. on 30th September, 2018 was ₹ 45 lakh.*

Examine the issue and provide the answers (with supporting explanatory note for each answer) to the following:

- (i) *Does Happy Ltd. have to register under CGST Act, 2017?*
- (ii) *Can Happy Ltd. take Credit of tax paid on the machinery purchased? If yes, what is the amount of Input Tax Credit (ITC) that can be availed? (5 Marks)*

- (b) *Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 2018. The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 2018.*

Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 2018, a tax of ₹ 1,20,000 and ₹ 1,50,000 became refundable on 1st and 3rd consignments, whereas a tax of ₹ 1,20,000 became due on 2nd consignment. Divy Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 2018 and pays the tax due on 2nd consignment on the same day. Tax was actually refunded to it of 1st consignment on 8th September, 2018, whereas of 3rd consignment on 18th September, 2018. 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. **(5 Marks)**

- (c) *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? **(5 Marks)**

- (d) *Payal Company, a unit located in Agri Export Zone has made exports of machineries worth US \$ 30 lakh per annum (on an average) during the last three years and in the current year. It wants to export certain goods for export promotion on free of cost basis, which are worth ₹ 25 lakh. 1 US \$ = ₹ 50. Examine whether Payal Company can export, export promotion goods on free of cost basis as proposed.* **(5 Marks)**

Answer

- (a) (i) As per section 22 of the CGST Act, 2017, a supplier is liable to be registered under GST in the State/ UT from where he makes the taxable supply if his aggregate turnover in a financial year (FY) exceeds ₹ 20 lakh in such State/UT (₹ 10 lakh in a Special Category State other than Jammu and Kashmir). The term 'aggregate turnover' includes exempt turnover also.

However, a person exclusively engaged in making exempt supplies is not liable to registration in terms of section 23(1) of CGST Act, 2017.

In view of combined reading of above provisions, although the 'aggregate turnover' of Happy Ltd. exceeds the applicable threshold limit of ₹ 20 lakh on 30.09.2018 [₹ 45 lakh], it was not required to be registered till 30.11.2018 as it supplied only exempted goods till that day. Therefore, Happy Ltd. needs to register within 30 days from

01.12.2018 (the date on which its supplies became taxable) as its turnover had already exceeded the threshold limit of ₹ 20 lakh on 01.12.2018.

- (ii) As per section 17 of the CGST Act, the input tax credit (ITC) on capital goods used or intended to be used exclusively for effecting exempt supplies is disallowed. However, where an exempt supply by a **registered person** becomes a taxable supply, such person gets entitled to take proportionate ITC on such capital goods in terms of section 18(1)(d) of CGST Act, 2017. Thus, a non-registered person cannot take ITC on capital goods under this provision.

Further, a person who has applied for registration within thirty days from the date on which he becomes liable to registration and has been granted such registration is also not entitled to take ITC on capital goods held with him on the day immediately preceding the date from which he becomes liable to pay tax in terms of section 18(1)(a) of CGST Act, 2017.

In the given case, Happy Ltd. is not registered at the time when its exempt supply becomes taxable. Thus, the company cannot take proportionate ITC on capital goods as mentioned above. Further, the company will also not be entitled for credit on capital goods held with it when it applies for registration in the prescribed manner.

- (b) 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 28.04.2018 under provisional assessment is 20.05.2018.

Thus, interest payable in respect of 2nd consignment
 $= ₹ 1,20,000 \times 18\% \times 53 [21.05.2018 - 12.07.2018]/365$
 $= ₹ 3,136$ (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 08.09.2018 which is within 60 days from the date of receipt of application of refund (12.07.2018), 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 10.09.2018.
 $= ₹ 1,50,000 \times 6\% \times 8 [11.09.2018-10.09.2018]/365$
 $= ₹ 197$ (rounded off).

- (c) Exceptional circumstances specified in rule 112 of the CGST Rules, 2017 where the production of additional evidence will be allowed are as follows:
- where the adjudicating authority/appellate authority (AA) has refused to admit evidence which ought to have been admitted.
 - where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/AA.
 - 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
 - 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.

- (d) Status holders are entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹ 1 crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower.

All exporters of goods having an import-export code (IEC) number shall be eligible for recognition as a status holder. Payal Company, upon achieving export performance of US \$ 12 million [₹ 30 lakh x 4] during current and previous 3 financial years, is eligible for status recognition as One Star Export House.

Being a unit in Agri Export Zone, exports of Payal Company is eligible for grant of double weightage for calculation of export performance for grant of status of One Star Export House. However, the same is not relevant for Payal Company as it is already eligible for grant of One Star Export House on the basis of its export performance without taking the benefit of double weightage.

Therefore, being a Status Holder, Payal Company is entitled to export freely exportable items on free of cost basis for export promotion as under:

(i) ₹ 1 crore

or

(ii) 2% of ₹ 1500 lakh [US \$ 30 lakh² x ₹ 50] which is ₹ 30 lakh

whichever is lower.

Thus, Payal Company can export goods worth ₹ 25 lakh for export promotion on free of cost basis.

² In the above answer, average annual export realization of US \$ 30 lakh per annum during preceding 4 years has been assumed to be the average annual export realization during preceding 3 licensing years.

Question 5

- (a) 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. **(5 Marks)**

- (b) Mr. Anant Kumar Gupta self-assessed his tax liability as ₹ 90,000 for the month of April 2018 but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-2018 which was received by Mr. Anant Kumar Gupta on 14-08-2018.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25/08/2018 and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of 90000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief. **(5 Marks)**

- (c) Miss Nitya has following balances in her Electronic Cash Ledger as on 28/02/2018 as per GST portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	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, 2018 for CGST and SGST was ₹75,000 each. She failed to pay the tax and contacted you as legal advisor on 12/04/2018 to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-2018.

Other Information:-

- (i) Date of collection of GST was 18th February, 2018.
- (ii) No other transaction after this up to 20th April 2018.
- (iii) Ignore penalty 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. **(5 Marks)**

- (d) In an order issued to SC Ltd., the adjudicating authority has confirmed a duty demand of ₹50 lakhs and imposed a penalty of equal amount under section 114A of the Customs Act, 1962, plus a penalty of ₹1 lakh under section 117 of the Customs Act, 1962. Their appeal to Commissioner (Appeals), challenging the duty demand and imposition of penalty after payment of required pre-deposit was dismissed. Now, they wish to file an appeal before CESTAT.

Indicate the amount they paid when they filed appeal before the Commissioner (Appeals) and they are required to pay towards pre deposit for filing the appeal under section 129E of the Customs Act, 1962 before the Customs, Excise, and Service Tax Appellate Tribunal:

- (a) if they dispute their liability to pay duty and penalties;
- (b) if they accept the duty liability but dispute the imposition of penalties.

Briefly explain the legal provisions relating to pre-deposit for appeals before first appellate authority and CESTAT. **(5 Marks)**

Answer

- (a) 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.

- (b) Due date for payment of tax for the month of April, 2018 is 20.05.2018.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax within 30 days of due date [i.e. 20.05.2018], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) ₹ 10,000,

whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on Mr. Anant Kumar Gupta is correct, but the amount of penalty ₹ 45,000 is not correct.

- (c) Due date for payment of tax collected on 18.02.2018 is 20.03.2018. Interest @ 18% p.a. is payable for the period for which the tax remains unpaid in terms of section 50 of CGST Act, 2017. In the given case, since Miss Nitya wants to pay the tax on 20.04.2018, interest payable on the amount of CGST and SGST each is as follows:

$$\text{Rs } 75,000 \times 18\% \times 31/365 = ₹ 1,147 \text{ (rounded off)}$$

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

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

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

- (d) The appellant has to deposit (i) 7.5% of the duty, in case where duty or duty and penalty are in dispute, or (ii) 7.5% of the penalty, where such penalty is in dispute, while filing an appeal before Commissioner (Appeals).

While filing appeal before CESTAT against the order passed by Commissioner (Appeals), the appellant has to deposit another (i) 10% of the duty, in case where duty or duty and penalty are in dispute, or (ii) 10% of the penalty, where such penalty is in dispute.

Further, where penalty alone is in dispute and penalties have been imposed under different provisions of the Customs Act, pre-deposit would be calculated based on the aggregate of all penalties imposed in the order sought to be appealed against.

The amount of pre-deposit shall not exceed ₹ 10 crores.

In view of the aforementioned provisions, pre-deposit amounts would be as follows:

- (a) If SC Ltd. dispute their liability to pay duty and penalties, before Commissioner (Appeals)
 = 7.5% of duty = 7.5% of ₹ 50 lakh = ₹ 3,75,000
- (b) If SC Ltd. accept the duty liability but dispute the imposition of penalties, before Commissioner (Appeals)
 = 7.5% of penalties = 7.5% of ₹ 51 lakh (₹ 50 lakh + ₹ 1 lakh) = ₹ 3,82,500
- (a) If SC Ltd. dispute their liability to pay duty and penalties, before CESTAT
 = 10% of duty = 10% of ₹ 50 lakh = ₹ 5,00,000
- (b) If SC Ltd. accept the duty liability but dispute the imposition of penalties, before CESTAT
 = 10% of penalties = 10% of ₹ 51 lakh (₹ 50 lakh + ₹ 1 lakh) = ₹ 5,10,000

Question 6

- (a) Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98 of CGST Act, 2017. **(5 Marks)**
- (b) What are the duties of National Anti-profiteering Authority enumerated in the CGST Act? **(5 Marks)**

(c) Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017. **(5 Marks)**

(d) In January, 2018, Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹7,50,000 and total duty payable was ₹1,50,000.

Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged.

On filing a representation to the Customs Department, proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹1,50,000.

Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable:

Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹7,00,000 ? **(5 Marks)**

Answer

(a) 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.
- (b) The duties of National Anti-profiteering Authority are as under:-**
- (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 (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.
If the eligible person does not claim return of the amount or is not identifiable, the amount not returned would be recovered and 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
- (c) Audit by Tax authorities under section 65 of the CGST Act, 2017:-**
- 1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
 - 2 The audit shall be completed within a period of 3 months from the date of conduct of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.
- Special Audit under section 66 of the CGST Act, 2017:-**
- 1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion

that the value has not been correctly declared or the credit availed is not within the normal limits.

- 2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.
- (d) The abatement of duty is allowed where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia*, any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination, on account of any accident not due to any wilful act, negligence or default of the importer.

Thus, in view of the above mentioned provisions, the stand taken by the proper officer of refusing the claim for abatement is not valid in law.

The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total duty payable

$$= [\text{₹ } 1,50,000 / \text{₹ } 7,50,000] \times \text{₹ } 1,50,000$$

$$= \text{₹ } 30,000$$

The abatement of duty is allowed where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia*, warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent.

Since in this case, imported goods have deteriorated before clearance for home consumption, abatement of duty will not be allowed and full duty will have to be paid.