

PAPER – 8: INDIRECT TAX LAWS

1. Question paper comprises of **6** questions. Answer question no. 1 which is compulsory and any **4** questions out of the remaining **5** questions.
2. Working notes should form part of the answer.
3. All the questions should be answered on the basis of position of (i) GST laws as amended by significant notifications/circulars issued till 31st October, 2020 and (ii) Customs law as amended by Finance Act, 2020 and significant notifications/circulars issued till 31st October, 2020.

Question 1

MS Ltd. is a GST registered company. During the month of October, 2020, the company has undertaken the following transactions and wants you to work out the GST output liability, admissible input tax credit and the amount that will have to be paid in cash by the company to the Government before taking you as a Manager in the company. There is no carry forward amount in respect of any of the items to be considered for the purpose of calculations other than what is mentioned specifically below.

Rate of IGST can be taken as 18%, CGST 9% and SGST 9% on all goods and services except GTA service/transportation service and restaurant service for which CGST and SGST rate would be 2.50% each and IGST rate would be 5%. The amounts indicated for all the items are without including the CGST and SGST or IGST element. Whether a supply attracts IGST or CGST/SGST has to be determined on the basis of details given.

The company has indicated to you that the GST liability for October, 2020 for their main product alone is ₹ 54 lakh of CGST and SGST each and ₹ 72 lakh IGST and the eligible credit on the inputs and input services for October, 2020 is ₹ 1.45 crore IGST and ₹ 20 lakh each towards CGST and SGST which can be straightaway taken for calculations.

Company has provided you the other details which is not part of the above as under:

| S.No. | Details of the transaction |
|-------|--|
| i. | During the month of October 2020, the company offered a special discount of 25% on a product, the sale of which it intended to discontinue from 1 st December 2020 onwards and issued credit notes to the dealers. This product was lying in stock with the dealers and the discount offered to the customers was borne by the company by issuing the credit note. The amount reimbursed to the dealers for the discounts given to the customers in the month of October 2020 was ₹ 36,00,000 in the course of inter-State. |
| ii. | The company sold a van used for personal transport by auction. The van had been purchased at ₹ 3,20,000. The depreciated value at the time of sale was ₹ 1,40,000. No GST credit was taken. The van was sold for an amount of ₹ 1,50,000 during the month of October 2020 in the course of intra-State. |

| | |
|-------|--|
| iii. | The company has a policy of raising invoices separately towards transportation cost of their products on their dealers at the time of invoicing for the products sold to them. The company is collecting GST at 5% on all transactions and the amount is collected as a percentage of the value of the goods supplied irrespective of the distance involved. The amount collected during the month of October 2020 towards transportation in intra-State transaction is ₹ 6 lakh and inter-State transactions is ₹ 4 lakh. |
| iv. | The security establishment of the company caught an employee who had stolen bearings of value ₹ 2.50 lakh during the month of October 2020. Bearings could not be recovered. But the company successfully recovered the cost from the employee. IGST credit of ₹ 45,000 had been taken by the company on these bearings. |
| v. | The company supplies food and beverages to the employees and all the items are priced at 10% of the actual cost to the company. During the month of October, 2020, the company had charged ₹ 50,000 to the employees. Assume that it is intra-State transaction. |
| vi. | During the month of October, 2020, the company purchased 10 mobile phones in its name and distributed to the employees to enable them to perform their duties more efficiently for the company. Total price of the phones was ₹ 1,20,000. At the end of the month, company sold these mobiles to employees and company recovered only ₹ 20,000 from the employees. Assume that it is intra-State transaction. |
| vii. | The company's registered office is located in a building which belongs to the local Municipality. The monthly rent is ₹ 1.50 lakh. |
| viii. | The whole-time director of the company was paid a salary of ₹ 5 lakh during the month. He was also paid ₹ 20,000 towards sitting fees for his participation in the meeting. |

Give a brief note to support your treatment for the items wherever required.

Note: Company wants to pay minimum amount of SGST as far as possible.

(14 Marks)

Answer

Computation of output GST liability of MS Ltd. for October 2020

| Particulars | CGST (₹ in lakh) | SGST (₹ in lakh) | IGST (₹ in lakh) |
|---|---------------------|---------------------|---------------------|
| GST liability for main product | 54 | 54 | 72 |
| After-sales discount on a product [In the given case, discount given after effecting the supply is not in terms of an agreement that existed | Nil | Nil | |

| | | | |
|---|---------------------|---------------------|-------------------|
| at the time of supply. Therefore, discount is not allowed as deduction from value of supply.] | | | |
| Sale of van used for personal transport by auction ¹ | 0.135 [1.5 × 9%] | 0.135 [1.5 × 9%] | |
| Transportation cost charged on the product [Supply of goods and transport service is a composite supply as the transportation cost is charged at a flat rate from all customers irrespective of the distance involved. Therefore, rate of principal supply (product) viz. 9% CGST and SGST each is charged on intra-State supply and 18% IGST is charged on inter-State supply.] | 0.54 [6 × 9%] | 0.54 [6 × 9%] | 0.72 [4 × 18%] |
| Food and beverages supplied to the employees [Goods being provided to the related person (employees), open market value of the same [actual cost (50,000×100/10)] has been considered as value. CGST & SGST @ 9% each is payable on food items.] | 0.45 [5.0×9%] | 0.45 [5.0×9%] | |
| Supply of mobile phones to employees ² [Supply being made to the related person (employees), open market value ³ of the same has been considered as value.] | 0.108 [1.20×9%] | 0.108 [1.20×9%] | |
| Total output tax liability | 55.233 | 55.233 | 72.72 |
| Less: ITC set off [Refer working note (1) below] [IGST credit is first utilized for payment of IGST liability and then for payment SGST liability followed by CGST liability since the SGST liability is to be kept at minimum.] | (16.597) | (55.233) | (72.72) |
| After exhausting IGST credit, CGST and SGST credit is to be utilized. ITC of CGST cannot be utilized for payment of SGST and vice versa. | (20.261) | | |
| GST payable in cash [A] | 18.375 | Nil | Nil |

¹ The value of supply as well as applicable rate of tax to be paid in case of old and used motor vehicles can also be determined in terms of Notification No 8/2018 CT (R) dated 25.01.2018.

² It has been assumed that selling of mobile phones to employees at reduced rates does not form part of the employment contract. Further, mobile phones have been considered as inputs. However, it is also possible to consider mobile phones as capital goods. Since in the given case mobile phones (capital goods) are being removed after being used, a specified 'amount' determined in terms of section 18(6) of the CGST Act, 2017 shall be payable.

³ Since mobile phones have been considered as inputs, purchase price of ₹ 1,20,000 for the mobile phones has been considered as its open market value.

| | | | |
|---|--------|-------|--|
| GST under reverse charge payable in cash [Refer working note (2) below] [B] [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.] | 0.153 | 0.153 | |
| Total GST payable in cash = [A] + [B] | 18.528 | 0.153 | |

Working notes:**(1) Computation of ITC available with MS Ltd. for October 2020**

| Particulars | CGST (₹ in lakh) | SGST (₹ in lakh) | IGST (₹ in lakh) |
|--|----------------------|----------------------|---------------------|
| Eligible credit on inputs and input services for the month | 20 | 20 | 145 |
| Ball bearings stolen [ITC on stolen goods is blocked. Hence, ITC taken on stolen ball bearings needs to be reversed.] | | | (0.45) |
| Mobile phones purchased for employees [ITC of goods used in course or furtherance of business is allowed.] | 0.108 [1.2 × 9%] | 0.108 [1.2 × 9%] | |
| Rent paid to Municipality | 0.135 [1.5 × 9%] | 0.135 [1.5 × 9%] | |
| Sitting fee paid to whole time director | 0.018 [0.20 × 9%] | 0.018 [0.20 × 9%] | |
| Total | 20.261 | 20.261 | 144.55 |

(2) Tax payable under reverse charge

| Particulars | CGST (₹ in lakh) | SGST (₹ in lakh) | IGST (₹ in lakh) |
|---|----------------------|----------------------|---------------------|
| Rent paid to Municipality [Tax on renting of immovable property services supplied by local authority to a registered person is payable under reverse charge.] | 0.135 [1.5 × 9%] | 0.135 [1.5 × 9%] | |
| Sitting fee paid to whole time director [Services provided by employee to employer in the course of his employment are not a supply. Hence, salary paid to director is not taxable. However, sitting fee is a consideration for the services provided beyond course of employment and hence, | 0.018 [0.20 × 9%] | 0.018 [0.20 × 9%] | |

| | | | |
|--|--------------|--------------|--|
| is taxable. Further, tax on sitting fee paid to director is payable under reverse charge.] | | | |
| Total tax payable under reverse charge | 0.153 | 0.153 | |

Note: In the above question, “.....GST at 5% on all transactions and the amount is collected as a percentage of the value.....” may be read as “.....GST at 5% on all transactions. The transportation cost is collected as a percentage of the value.....”.

Question 2

(a) Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April 2020 and provides the following further information.

(i) His intra-State turnover for the first two quarters was as follows:

April, 2020 - June, 2020 - ₹ 20 lakh

July, 2020 - September, 2020 - ₹ 100 lakh

(ii) In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.

(iii) Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July, 2020.

You are required to compute the tax payable by Mr. Yash under GST laws from the above information:

(i) If he is a manufacturer

(ii) If he is a trader

(5 Marks)

(b) When lock down was announced due to corona virus, BCD Ltd. decided that it would sell its own branded groceries at 20% of the cost to any organisation who is providing free food and groceries to the poor and needy as its contribution to the nation. The details of the transaction from April, 2020 to September, 2020 during which it had done this are given below:

| S.No. | Particulars | Amount in rupees |
|-------|--|--------------------------------------|
| i | Total turnover (excluding GST) of branded groceries and food grains during the period as per the invoices issued and accounted for GST purposes (Actual value of the goods is ₹ 30 crores) | 6 crore |
| ii | Tax paid on the security and maintenance services during the period | CGST-1.35 lakh SGST - 1.35 lakh |
| iii. | Tax paid on the rent paid on the warehouse for storage of goods and for undertaking packing etc. | CGST - 4.50 lakh SGST - 4.50 lakh |
| iv | Tax paid on packing materials and printing charges on packing materials | CGST-11.15 lakh SGST-11.15 lakh |

What is the value to be adopted for the purpose of payment of GST?

Compute the admissible input tax credit and output tax liability and indicate whether any tax has to be paid in cash. Assume the rate of CGST and SGST as 2.50% each on the branded groceries and food grains and all sales are intra-State only. **(4 Marks)**

- (c) An importer imported a machine from Germany. The vessel carried the machine up to Chennai port and from the Chennai port the machine was transhipped to Kandla port. Determine the assessable value under Customs Act, 1962. Conversion to Indian rupees has already been done wherever required.

| S.No. | Particulars | Amount in rupees |
|-------|---|------------------|
| i | Basic cost of the machine at the factory in Germany | 2,00,000 |
| ii | Transport charges of the machine from the factory in Germany to the load port for transportation to India | 10,000 |
| iii | Loading and handling charges at the load port in Germany for loading the machine on the ship | 2,000 |
| iv | Freight charges payable to the shipping company for transport to India | 10,000 |
| v | Insurance charges paid but not ascertainable | - |
| vi | Transshipment charges from Chennai to Kandla port | 5,000 |
| vii | Unloading and handling charges paid at Kandla port | 2,000 |

Provide brief note to support your conclusion wherever required.

(5 Marks)

Answer

- (a) As per section 10 of the CGST Act, 2017 read with rule 7 of the CGST Rules, 2017, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

| | |
|---|---|
| Manufacturers, other than manufacturers of notified goods | 1% (½% CGST+ ½% SGST/UTGST) of the turnover in the State/ Union territory |
| Trader | 1% (½% CGST+ ½% SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory |

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

- (i) **If Mr. Yash is a manufacturer**

$$\text{CGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

$$\text{SGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

(ii) If Mr. Yash is a trader

CGST = ₹ 75 lakh (as 25% of turnover is exempt) \times 0.5% = ₹ 37,500

SGST = ₹ 75 lakh (as 25% of turnover is exempt) \times 0.5% = ₹ 37,500

(b)

| Particulars | | Amount (₹) |
|--|------------------|------------------|
| Value of supply adopted for payment of GST [Transaction value, which is the price actually paid or payable for the supply, is adopted for purpose of payment of GST.] | | 6,00,00,000 |
| Output tax liability | CGST @ 2.5% (₹) | SGST@ 2.5% (₹) |
| Output tax liability on ₹ 6 crores [A] | 15,00,000 | 15,00,000 |
| Input tax credit | CGST (₹) | SGST (₹) |
| Security and maintenance | 1,35,000 | 1,35,000 |
| Warehousing rent | 4,50,000 | 4,50,000 |
| Packing and printing | <u>11,15,000</u> | <u>11,15,000</u> |
| Total input tax credit available [B] | 17,00,000 | 17,00,000 |
| Net tax payable in cash [A] - [B] | Nil | Nil |

(c)

Computation of assessable value

| Particulars | Amount (₹) |
|--|-----------------|
| Cost of machine | 2,00,000 |
| Add: Transport charges from factory in exporting country to load port | 10,000 |
| Add: Loading and handling charges at load port | <u>2,000</u> |
| FOB value | 2,12,000 |
| Freight charges for transport to India | 10,000 |
| Insurance charges [Insurance charges have been included @ 1.125% of FOB value of goods] | <u>2,385</u> |
| Assessable value | 2,24,385 |

Note: Cost of transport, unloading and handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value.

Question 3

- (a) SRK Limited, registered under GST, is engaged in sale of fabrics as well as doing job work of knitting of yarn for garment manufacturers. The company provides the following information in respect of order received for both sale of fabrics and job work:

| Event | Supply of fabrics | Job work of knitting |
|---|-------------------|----------------------|
| Date of confirmation of order | 01-08-2020 | 10-09-2020 |
| Date of receipt of advance of ₹ 1,00,000 each | 05-08-2020 | 12-09-2020 |
| Date of removal of goods on completion of order | 10-08-2020 | 15-09-2020 |
| Date of issue of invoice for full amount | 15-08-2020 | 20-09-2020 |
| Date of receipt of balance payment of ₹ 50,000 each | 25-08-2020 | 25-09-2020 |

Determine the time of supply for the purpose of payment of tax under CGST Act, 2017, in respect of the above orders executed by the company. **(5 Marks)**

- (b) XYZ Ltd. has obtained a loan from a foreign bank. The company does not have an account with the foreign bank from whom it has taken the loan. Whether RCM liability under GST laws should be discharged in this regard for import of services received in relation to the loan?

Provide relevant legal provisions in support of your answer.

(4 Marks)

- (c) Mr. Chandrakant imported a car from Britain (UK). After the car arrived in the port and was unloaded, he went and saw the car and found that it was damaged and it was possible to get the car repaired and use it. The examination by Customs for the purpose for assessment is not over. He has come to you seeking advice as to what are the options available to him under the Customs Act, 1961? **(5 Marks)**

Answer

- (a) Time of supply in case of supply of fabric:**

Supply of fabric is supply of goods. The time of supply of goods for the purpose of payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued viz. before/at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Thus, the time of supply for advance of ₹ 1,00,000 as well as for the balance payment of ₹ 50,000 received for the supply of fabric is 10.08.2020.

Time of supply in case of job work:

Job work is treated as supply of services. The time of supply of services in case where the invoice is issued within 30 days of provision of service is the earlier of date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services).

Thus, the time of supply for advance of ₹ 1,00,000 received for the supply of job work services is 12.09.2020 and for balance payment of ₹ 50,000 is 20.09.2020.

- (b) Yes. RCM liability needs to be discharged on such services.

The place of supply of services supplied by a banking company in case where either supplier or recipient is located outside India is location of supplier provided said services are supplied to an account holder, otherwise the place of supply is the location of the recipient.

Accordingly, in the given case, the place of supply is the location of recipient – XYZ Ltd., i.e., India.

Since the supplier is outside India and recipient and place of supply are in India, said service qualifies as import of services which in turn, is considered as inter-State supply.

- (c) Where any imported goods, other than warehoused goods, had been damaged at any time after unloading but before their examination by customs authorities, on account of any accident not due to any willful act, negligence or default of the importer, abated duty shall be charged on said goods.

In the given case, the imported goods have been damaged after unloading but before examination and such damage is not due to negligence of the importer. Therefore, benefit of abated duty will be available to Mr. Chandrakant.

He can either get the damaged car valued by the proper officer or it may be sold by the proper officer by public auction or by tender, or with the consent of Mr. Chandrakant in any other manner, and the gross sale proceeds shall be deemed to be the value of such car.

The duty charged on damaged car will be computed as under:

$$= \text{Duty on car before damage} \times (\text{Value of damaged car} / \text{Value of car before damage})$$

Question 4

- (a) In the month of April 2020, Z started supply of goods in his proprietary firm and also set up a one-man company named Z Ltd. He needs your assistance to work out his aggregate turnover for the purpose of GST registration. The turnover details up to the month of July, 2020 are as under:

| S.No. | Particulars of supplies | Amount (₹ in lakh) |
|-------|---|--------------------|
| i. | Supplies of taxable goods of his firm | 31.50 |
| ii. | Supplies of taxable goods to a 100% EOU of his firm | 1.50 |
| iii. | Exports of taxable goods of his firm | 2.60 |
| iv. | Exempt supplies of his firm | 2.40 |
| v. | Supplies of non-taxable goods of his firm | 3.00 |

| | | |
|------|--|------|
| vi. | Supplies of taxable goods by the one-man company set up in his name | 2.70 |
| vii. | Value of supplies on which Z is liable to pay tax under reverse charge mechanism (RCM) | 0.80 |

Note: All his supplies are intra-State except export.

(5 Marks)

(b) Candidates are required to attempt either part (i) or part (ii).

- (i) DF Ltd. exported goods valued ₹ 50 lakh and received refund of integrated tax paid amounting to ₹ 9 lakh on 16th August, 2020. He could realise export proceeds to the extent of ₹ 25 lakh, but did not realise the balance export proceeds within the prescribed time limit of 9 months and has applied for extension of time to RBI. There is no dispute about the supply of the goods as regards quality, time of supply and fulfilment of terms and conditions of sale. He wants you to inform him of the consequences under GST law in case RBI does not give him the extension. **(4 Marks)**

OR

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

- (a) Square Ltd., registered in Andhra Pradesh, sends goods to its job worker Cube & Co. in Karnataka, which is also registered under GST. Value of the consignment was ₹ 45,000 (including GST). **(2 Marks)**
- (b) Mr. Bheeshma of Telangana started doing business in notified handicraft products as a casual taxable person. He got his first order of ₹ 30,000 from Tamil Nadu which he transports. He is not registered under GST since he has a threshold limit of ₹ 20 lakh. **(2 Marks)**

- (c) Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 25% under section 8B of the said Act with the following information made available by the importer:

| | |
|--|-------------|
| Assessable value of fibre granules imported from three developing countries during July 2020 | ₹ 25,00,000 |
| Share of imports of fibre granules from three developing countries taken together against total imports of fibre granules to India | 10% |
| Rate of basic customs duty | 10% |
| Rate of integrated tax | 12% |
| Rate of social welfare surcharge | 10% |

(5 Marks)

Answer

(a)

| Computation of aggregate turnover of proprietary firm of Z | |
|---|--------------------------------|
| Particulars | ₹ (in lakh)⁴ |
| Supplies of taxable goods [Taxable supplies are included in aggregate turnover.] | 31.50 |
| Supplies of taxable goods to a 100% EOU [Deemed exports being taxable supplies are included in aggregate turnover.] | 1.50 |
| Exports of taxable goods [Included in aggregate turnover.] | 2.60 |
| Exempt supplies [Included in aggregate turnover.] | 2.40 |
| Supplies of non-taxable goods [Exempt supplies are included in aggregate turnover. Exempt supplies include non-taxable supplies also.] | 3.00 |
| Supplies of taxable goods by one-man company set up in Z's name [Not included as one person company is a separate entity with separate PAN.] | - |
| Value of supplies on which Z is liable to pay tax under RCM [Value of inward supplies on which tax is payable on reverse charge basis are excluded from the aggregate turnover.] | - |
| Aggregate turnover of proprietorship firm of Z | 41.00 |
| Computation of aggregate turnover of Z Ltd. - one man company of Z | |
| Supplies of taxable goods by one-man company set up in Z's name [Taxable supplies are included in aggregate turnover.] | 2.70 |
| Aggregate turnover of Z Ltd. | 2.70 |

- (b) (i) Where any applicant has received the refund of integrated tax paid on export of goods but could not realise the sale proceeds of such exported goods within the prescribed time limit (or extended time period), he shall deposit the amount so refunded along with interest of 18% within 30 days of the expiry of the said period (or extended time period), to the extent of non-realisation of sale proceeds.

⁴ It has been most logically assumed that the amounts given in the question are excluding GST wherever required.

However, if the RBI writes off the requirement of such realization on merits, recovery shall not be made.

In view of the aforesaid provisions, DF Ltd. has to deposit the refund of integrated tax of ₹ 4.5 lakh (to the extent of non-realisation of export proceeds of ₹ 25 lakh) along with interest @ 18% within 30 days of the expiry of the prescribed time-limit.

In case of failure to do so, the amount will be recovered in accordance with the provisions relating to recovery of erroneous refund and also penalty can be imposed

OR

- (ii) (a) E-way bill is mandatorily required to be issued in case of inter-State transfer of goods by principal to job-worker, irrespective of the value of the consignment.

In view of the same, e-way is mandatorily required to be issued in the given case.

- (b) E-way bill is mandatorily required to be issued in case of inter-State transfer of handicraft goods by a person exempted from obtaining registration.

In view of the same, e-way bill is mandatorily required to be issued in the present case.

- (c) **Computation of customs duty payable including the safeguard duty payable thereon**

| Particulars | Amount (₹) |
|--|------------------|
| Assessable value of fibre granules imported | 25,00,000 |
| Add: Basic custom duty @ 10% (₹ 25,00,000 × 10%) | 2,50,000 |
| Safeguard duty @ 25% on ₹ 25,00,000 [Safeguard duty is imposable in the given case since share of imports of fibre granules from the three developing countries taken together exceeds 9% of the total imports of fibre granules into India.] | 6,25,000 |
| Social welfare surcharge @ 10% of ₹ 2,50,000 | 25,000 |
| Total | 34,00,000 |
| Integrated tax (₹ 34,00,000 × 12%) [Value for calculation of integrated tax shall also include safeguard duty amount.] | 4,08,000 |
| Total customs duty payable ₹ (2,50,000 + 6,25,000 + 25,000 + 4,08,000) | 13,08,000 |

Question 5

- (a) Discuss the amount of tax and penalty to be paid, if any, in the following independent cases where show cause notices are issued under section 74 of the CGST Act, 2017.

| S.No. | Date on which credit was taken wrongly | Amount of input tax credit taken wrongly (₹ in lakh) | Present status |
|-------|--|--|---|
| 1 | 31 st January, 2018 | 200 | Adjudication order passed on 26 th July, 2020 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty. |
| 2 | 30 th June, 2018 | 250 | Adjudication order passed on 26 th August, 2020 demanding the entire amount of credit with interest and imposing amount equal to the credit as penalty. |
| 3 | 30 th October, 2018 | 120 | Show cause notice has been issued on 5 th September, 2020 demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken. |
| 4 | 30 th January, 2019 | 50 | Statement of the Managing Director has been recorded on 6 th September, 2020 wherein he has admitted the non-receipt of the inputs and availing the credit wrongly. |

Note: In all the cases, assessee wants to pay the amount on 20-09-2020. **(5 Marks)**

- (b) Discuss the validity of the following independent cases under the provisions of CGST Act, 2017:
- CGST officer had issued a notice under section 74(1) against which appeal was preferred by the assessee. Appellate Authority concluded that the notice issued under section 74(1) 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). Is the action of the officer valid?
 - 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? **(4 Marks)**
- (c) (i) Compute the interest payable to an exporter in the following case of delayed payment of drawback as per the Customs Act, 1962.

The claim was made on 30th June, 2020 for ₹ 80,000 and was settled on 15th September 2020. **(3 Marks)**

- (ii) Compute the interest payable by the exporter under the Customs Act, 1962 in the case of recovery of ₹10,000 paid erroneously on 3rd July, 2020. Demand for recovery was issued on 5th September, 2020 and the exporter paid back the amount on 3rd November, 2020. **(2 Marks)**

Answer

(a)

| S. No. | Date on which credit was taken wrongly | Amount of ITC wrongly taken (₹ in lakh) | Tax & penalty under section 74 |
|--------|--|---|--|
| 1 | 31 st January 2018 | 200 | Adjudication order is passed on 26 th July, 2020 and payment is made on 20.09.2020 i.e., after 30 days of the communication of the adjudication order ⁵ . Therefore, entire amount of ITC wrongly availed which is ₹ 200 lakh and equal amount of penalty i.e., ₹ 200 lakh shall be payable. |
| 2 | 30 th June 2018 | 250 | Adjudication order is passed on 26 th August, 2020 and payment is made on 20.09.2020 i.e., within 30 days of the communication of the adjudication order ⁶ . Therefore, entire amount of ITC wrongly availed which is ₹ 250 lakh and 50% of the penalty imposed i.e., ₹ 125 lakh shall be payable. |
| 3 | 30 th October 2018 | 120 | Show cause notice is issued on 5 th September 2020 and payment is made on 20.09.2020 i.e., within 30 days of issue of show cause notice. Therefore, entire amount of ITC wrongly availed which is ₹ 120 lakh and 25% of the penalty imposed i.e., ₹ 30 lakh shall be payable. |

⁵ It is assumed that adjudication order is communicated the same day on which it is passed.

⁶ It is assumed that adjudication order is communicated the same day on which it is passed.

| | | | |
|---|-------------------------------------|----|--|
| 4 | 30 th January 2019 | 50 | <p>Alternative-I: It is assumed that payment has been made within 30 days of issue of show cause notice.</p> <p>Entire amount of ITC wrongly availed which is ₹ 50 lakh and 25% of the penalty imposed i.e., ₹ 12.5 lakh shall be payable.</p> <p>Alternative-II: It is assumed that show cause notice has not yet been issued.</p> <p>Payment made on 20.09.2020 is before issuance of show cause notice. Therefore, amount of ITC admitted to be taken wrongfully which is ₹ 50 lakh and penalty equal to 15% of such ITC i.e., ₹ 7.5 lakh shall be payable.</p> |
|---|-------------------------------------|----|--|

- (b) (i) **Valid.** As per section 75 of the CGST Act, 2017, if the Appellate Authority concludes that the notice issued under section 74(1) 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.
- (c) (i)

| Particulars | |
|--|----------|
| Duty drawback claimed | ₹ 80,000 |
| No. of days of delay [31.07.2020 to 15.09.2020] | 47 days |
| Rate of interest | 6% |
| Interest [₹ 80,000 × 47/365 × 6/100] (rounded off) | ₹ 618 |

Note: Since the claim of duty drawback is not paid to exporter within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback.

- (ii)

| Particulars | |
|---|----------|
| Duty drawback paid erroneously | ₹ 10,000 |
| No. of days of delay [04.07.2020 to 03.11.2020] | 123 days |

| | |
|--|-------|
| Rate of interest | 15% |
| Interest [$\text{₹}10,000 \times 123/365 \times 15/100$] (rounded off) | ₹ 505 |

Note: Interest is payable by the exporter on duty drawback paid erroneously @ 15% per annum for the period beginning from the date of payment of such drawback to the exporter, till the date of recovery of such drawback.

Question 6

- (a) Discuss the liability of partners of firm to pay tax, interest and penalty under section 90 of the CGST Act, 2017. **(4 Marks)**
- (b) Explain the provisions relating to assessment of unregistered persons by the proper officer under section 63 of the CGST Act, 2017. **(5 Marks)**
- (c) List the important aspects to be borne in mind in claiming drawback under section 75 of the Customs Act, 1962 on imported materials used in the manufacture of export goods. **(5 Marks)**

Answer

- (a) Where any firm is liable to pay any tax, interest or penalty under the CGST Act 2017, the firm and each of the partners of the firm are jointly and severally liable for such payment.

Where any partner retires from the firm, he or the firm, is required to intimate the date of retirement of the said partner to the Commissioner by a notice in writing and such partner would 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 would continue until the date on which such intimation is received by the Commissioner.

- (b) Notwithstanding anything to the contrary contained in section 73 or section 74 of the CGST Act, 2017, where a taxable person–

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled for any of the specified reasons*, but who was liable to pay tax,

the proper officer may proceed to assess the tax liability of said taxable person to the best of his judgement for the relevant tax periods.

*Specified reasons for cancellation are as under

- (a) registered person has contravened such provisions of the CGST Act or the rules made there under as may be prescribed; or

- (b) a person paying tax under composition levy under section 10 of the CGST Act has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 of the CGST Act has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

- (c) The important aspects to be borne in mind in claiming drawback under section 75 of Customs Act, 1962 on imported materials used in the manufacture of export goods are as under: -
 - (i) The goods exported are entirely different from the inputs.
 - (ii) The inputs are imported goods on which duty of customs has been paid.
 - (iii) The existence of the imported goods in the final product is not capable of easy verification at the point of export.
 - (iv) The goods, namely the inputs might have undergone changes in physical shape, property etc.
 - (v) The quantity of inputs per piece of final product may not be uniform and may not also be capable of verification at the time of exportation.
 - (vi) Duty drawback is not allowed if the export value of the finished goods is less than the value of the imported material used in their manufacture/processing/carrying any other operations.
 - (vii) Duty drawback is not allowed if the export value is not more than notified percentage of the value of the imported materials used in the manufacture/processing/carrying any other operations.
 - (viii) In case where sale proceeds in respect of any goods on which drawback has been allowed are not received in India within the prescribed time, drawback shall be deemed never to have been allowed and it shall be recovered from the exporter.

Note: Any five points may be mentioned.